



# Intellectual Property and Competition Law

A Global Practice Guide prepared by the Lex Mundi Intellectual Property Practice Group

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## About This Guide

Intellectual Property Rights and Competition Law have been described as an unhappy marriage. The former may be seen to promote monopolies whilst the latter is designed to oppose them. Despite these apparent differences the two are inextricably linked and all practitioners require having an understanding of competition rules which affect exploitation of intellectual property rights. Competition law affects licence agreements.

In order to provide a better understanding of the relationship between IP and Competition Law the IP Practice Group felt it would be interesting and worthwhile to survey the membership of Lex Mundi on the effect of competition law on IP in their jurisdiction.

The intention was for the guide to concentrate on a number of particular aspects of competition/antitrust rules in respect of IP licence agreements and supply/distribution agreements, to determine to what degree there might be uniformity (or not) of application across members' jurisdictions. Details of the matters covered by the survey are outlined in the Question Index below.

Given the level of responses the results of the survey have been condensed into a user friendly format, which will hopefully give participants a reasonable flavour of the issues arising in different jurisdictions without being too overwhelming.

This publication is not intended to represent a comprehensive guide nor legal advice on the matters covered, but rather provide a general overview on the subject. They may only be used as an indication and advice should always be sought from the appropriate Lex Mundi member law firm.

Please note that each response was provided on a different date, and therefore the answers to the survey refer to laws and regulations in force on that specific date.

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## Using the Survey

The survey itself is set out in 3 main parts:

**Question Index**  
**Survey Responses**  
**Glossary**

### *Question Index*

The Question Index sets out the questions contained in the original survey. The response for each jurisdiction has been condensed and placed in a table format, the same table being used for each jurisdiction. The numbering of each of the questions corresponds with the entries in the tables. Hopefully this will allow for easier cross referencing when seeking a view on a particular issue in a specific jurisdiction. The page number for each individual jurisdiction can be found in the Response Index.

### *Glossary*

At the end of the survey there is a short Glossary of common or specialist terms. Where these have been used in the responses the terms have been highlighted in bold text. Detailed explanations of these terms will not therefore always appear in the entries themselves.

### *EU and USA*

The law in the EU and USA has been harmonised. As such there is an entry for each of the EU and USA jurisdictions which set out the harmonised position. The individual entries for EU members and USA States refer where applicable to the EU and USA entries.

### *Example*

Question 10(a) of the survey was whether in a particular territory a licensee could be obliged to grant the licensor an assignment of severable improvements.

If you wanted an indication as to the position in Argentina and Italy then you would look at the respective tables (page 12 - Argentina, page 84 – Italy). The entry corresponding to Question 10(a) provides the position in each of the jurisdictions. In the case of Italy reference is made to the EU entry.

## Overview of Results

The results of the survey demonstrate some common trends and themes:

### (a) Relationship with General Competition Law

The state of development of competition/anti-trust law differs greatly across the world. Where competition law is well developed, jurisdictions generally incorporate provisions dealing with IP into that system. This may be by means of additional regulations (e.g. Europe), by issuance of guidelines (e.g. Japan, USA) or by specific provisions regarding IP within Competition legislation (e.g. New Zealand).

Jurisdictions with less developed general competition law may make provision for competition aspects within specific IP legislation (e.g. the Philippines). This can result in protection for IP rights being piecemeal with certain types of IP agreements being more strictly controlled than others. Other jurisdictions have legislated for specific industries; in particular for certain technologically advanced industries such as telecommunications (e.g. Malaysia).

Some jurisdictions explicitly exclude intellectual property rights from the effect of competition laws. Given the conflict between the exercise of what is in many cases a monopoly right and competition legislation that would impinge on this right this is perhaps not unexpected (e.g. Australia).

### (b) Harmonisation

Given the impact on trade it is perhaps not unsurprising that there are a number of jurisdictions in which trans-jurisdictional rules impact heavily on the responses. The European Union, the United States of America at a federal level and Andean Community all have legislated in the area of competition law. In the case of Europe and the Andean Community this legislation has supremacy over national law. In contrast in the United States, enacted State law is generally not pre-empted by the Federal Legislation. That said, many States law closely mirror the Federal Anti-trust provisions and as such US Federal Court decisions are widely influential.

The effects of harmonised systems are often felt beyond the borders of their member jurisdictions. In Europe, the countries of the European Economic Area share the affect of the EU competition provisions and indeed Switzerland, which is neither a member of the EU or EEA has rules which are influenced greatly by those of the Union.

### (c) Balancing

In many jurisdictions determining whether a provision of an agreement is valid involves a balancing of the pro and anti-competitive aspects of an arrangement. In some jurisdictions (e.g. the USA (state and federal), South Africa) this is referred to as a **rule of reason** approach. In assessing this balance there are number of different factors that are taken into account. The importance placed on such factors differs from one jurisdiction to another. The factors include:

#### (i) Dominant position in a market

The power of the parties to an agreement in the relevant market will almost always be an important factor impacting on the competitive effect of a restriction. Most legal systems make some form of distinction in the treatment of entities which wield significant market power. These distinctions are made in a variety of ways: whether it is by application of market thresholds (see below); explicit exemption from the application of certain rules; or merely a factor within the overall balancing of the competitive effects. Universally it is accepted that agreements between parties with any form of dominance are more likely to have an adverse affect on a market and therefore are more strictly treated than those without such a position.

#### (ii) Competitors/Non-competitors

The importance of the competitor/non-competitor relationship between the parties varies. The explicit distinction of competitors and non-competitors within legislation is sometimes made (see EU and Singapore) but even where this is not made the treatment of agreements between competitors and non-competitors will often be different in the overall balancing of the competitive effects. It is generally accepted throughout jurisdictions with developed competition systems that arrangements between competitors are more likely to have an adverse affect on competition than arrangements between non-competitors.

(iii) Reciprocity

Explicit treatment of **reciprocal** agreements as more anti-competitive within the legislative regulations is almost exclusively a European concept. However, reciprocity of such arrangements will in many legal systems remain a factor to be considered within the balancing of the effects.

(d) Absolute Prohibitions

Some legal systems lay down absolute prohibitions - provisions that, regardless of the position of the parties or other factors involved, are considered so anti-competitive that no further consideration is required of their effect. Within the EU these are referred to as **Hard core** restricted, in many other legal systems often as *per se* prohibitions. Most systems have some form of such prohibitions to a degree. Common examples are: price fixing and tie-in clauses.

(e) Exemptions

In addition to the absolute prohibitions a limited number of systems adopt a series of exemptions to clarify (in certain circumstances) whether a particular type of arrangement is likely to fall foul of the general rule.

(i) **De minimis**/market threshold

Market power of the parties plays a role in determining whether a particular arrangement affects competition - this is generally accepted. Conversely limited market power or influence will limit the anti-competitive affect of any arrangement. However, few systems formalise these rules into an explicit exemption from the application of the general rules. The EU applies a *de minimis* rule, which will exempt arrangements between parties with a certain market share from assessment of the competitive effects; Singapore likewise has specific exemption. Some systems adopt less formal guidelines which indicate that below certain thresholds arrangements are unlikely to affect competition (see US Federal). However, the majority of systems do not apply such exemptions.

(ii) Exempt Agreements

Some jurisdictions exempt agreements if they meet specific criteria. The EU applies a **block exemption** to agreements that fall within certain defined parameters and sets out a series of closely defined exceptions and exemptions. Whilst some other systems (e.g. South Africa) offer this type of comfort, many jurisdictions adopt a **rule of reason** analysis to deal with such provisions.

(f) Specific Provisions

From the responses it is clear that certain provisions are treated in a broadly similar manner throughout the world, with a few exceptions. Examples include:

(i) Duration of Agreements

In most jurisdictions the term of a licence agreement should only be for the duration of the IP right. However there are some jurisdictions where there is no specific regulation of the duration and in Brazil the licence can only be for an initial term of 5 years if it is to be registered.

(ii) Price Fixing

In most jurisdictions price fixing will be deemed anti-competitive. Whilst this is very often an absolute prohibition, it is not universally so. For example, Argentina will allow price fixing, subject to a non-reasonable price being deemed an illegal exercise of market power. It is, however, clear that the aims of both approaches in dealing with price control are similar (that repressive price control is anti-competitive and should be avoided); it is also quite possible that despite these differing methodologies price control in similar circumstances will result in similar outcomes.

(iii) Non Compete Provisions

In most jurisdictions non-competes provisions in distribution agreements will be permitted during the term of the agreement provided these are reasonable. Post termination restrictions however vary. In some jurisdictions it is permitted for a certain period of time following expiry or termination of the agreement. In other jurisdictions post termination restrictions are not permitted at all.

It is not possible to provide an exhaustive summary of the trends and exceptions to be found in the responses to the survey; however it is hoped that the format of the survey results will permit members to carry out an easy comparison of the issues that interest them.

(g) Continuing development

Competition law is still a quickly developing area of law in many parts of the world. Even countries which are economically well developed are still in the process of bringing their competition legislation up to date. Some jurisdictions are waiting for bills to pass or regulations to be issued (e.g. Indonesia). Other countries have passed legislation, but have little jurisprudence to aid with interpretation of the provisions (e.g. Chile) and some have new legislation on the statute books, but no indication about when it is likely to come into force (e.g. India).

## Question Index

### Part A - Technology Licenses

#### 1 **Legislation/Rules**

Is there specific competition or antitrust legislation or legal rules that regulate agreements relating to the licensing, transfer or other exploitation of intellectual property rights?

#### 2 **Market Shares**

Does the parties' individual or joint market share threshold affect the application of these regulations/rules?

#### 3 **Duration**

Please specify any maximum duration for licences of:

- (a) intellectual property rights, generally?
- (b) know-how?

#### 4 **Regulation of Price**

Can a licensor regulate (directly or indirectly) the prices at which a licensee sells products incorporating licensed intellectual property?

#### 5 **Limitation of Production**

Can a licensor limit output by a licensee?

#### 6 **Tie-in Clauses**

Can a licensor impose "tie in" clauses obliging a licensee to buy certain goods and services from a licensor?

#### 7 **General Restrictions**

Can the grant of a licence be restricted to the following:

- (a) specified customers?
- (b) customer groups?
- (c) field of use?
- (d) territory?

#### 8 **Active/Passive Sales Restrictions**

Can a licensor restrict **active** or **passive sales** by one licensee into another licensee's territory?

#### 9 **Restriction on exploitation of Licensee IP**

Can a licensor restrict a licensee's ability to exploit its own intellectual property or carry out Research and Development (R&D)?

## 10 **Improvements**

Can a licensee be obliged to grant to a licensor the following:

- (a) an assignment of severable improvements?
- (b) an exclusive licence of severable improvements?
- (c) a non-exclusive licence of severable improvements?
- (d) an assignment or exclusive licence of non-severable improvements?

## 11 **Challenge to IPR**

Can a licensor terminate the agreement should a licensee challenge a licensor's right to the intellectual property?

## 12 **Severability**

Where anti-competitive provisions are included in an agreement are they capable of being severed or will they result in the agreement being void?

## **Part B - Distribution Agreements**

### 1 **Legislation/Rules**

Is there specific competition or antitrust legislation or legal rules which regulate supply or distribution agreements?

### 2 **Regulation of Price**

Are there restrictions on:

- (a) recommended sales prices?
- (b) minimum sales prices?
- (c) maximum sales prices?

### 3 **Restrictions**

Can the reseller be restricted to certain:

- (a) territories?
- (b) customers?
- (c) customer groups?

### 4 **Active/Passive Sales Restrictions**

Can the reseller be restricted from making **active** or **passive sales**?

### 5 **Non-compete provisions**

Can you include **non-compete** provisions during and after the term of the agreement?

**6 Restrictions on competing products**

Can you restrict the reseller from selling competing products, both generally and with respect to specific competing products?

**7 Severability**

Where anti-competitive provisions are included in an agreement are they capable of being severed or will they result in the agreement being void?

## Intellectual Property and Competition Law

### Argentina

Prepared by Lex Mundi member firm Marval, O'Farrell & Mairal

<b><u>Part A - Technology Licenses</u></b>	
1. <b>Legislation/Rules</b>	<u>Antitrust Law No.25,156</u> : prohibits all conduct that restricts competition and harms the general economic interest.
2. <b>Market Shares</b>	N/A
3. <b>Duration</b>	(a) intellectual property rights, generally: No maximum duration. (b) know-how: No maximum duration, unless limited by contract.
4. <b>Regulation of Price</b>	Yes, prices may be regulated.  Note: non-reasonable price may be an illegal exercise of market power: prices set should be in relation to product being licensed (Antitrust Law)
5. <b>Limitation of Production</b>	Generally, yes. Note: There are prohibitions against such limitations where these may impact on public services or services of public interest (Antitrust Law)
6. <b>Tie-in Clauses</b>	Specifically prohibited clause if harms the general economic interest. Tie-ins are deemed anti-competitive if there is a dominant position in the principal market (National Commission for Defense of Competition).
7. <b>General Restrictions</b>	(a) specified customers: Exclusive and non-exclusive licenses may be restricted. <b>Rule of reason</b> approached applied. (b) customer groups: Exclusive and non-exclusive licenses may be restricted. <b>Rule of reason</b> approached applied. (c) field of use: Exclusive and non-exclusive licenses may be restricted. <b>Rule of reason</b> approached applied. (d) territory: Exclusive and non-exclusive licenses may be restricted. <b>Rule of reason</b> approached applied.
8. <b>Active/Passive Sales Restrictions</b>	<b>Active sales</b> may be restricted; otherwise the Antitrust Law prohibits practices that establish minimum quantities or the horizontal allocation of markets, customers and sources of supplies.

9. <b>Restriction on exploitation of Licensee IP</b>	May be construed as market allocation and prohibited under Antitrust Law - Academic discomfort with this type of clause as restricting competition between competing parties in relation to the technology offered or products manufactured.
10. <b>Improvements</b>	(a) an assignment of severable improvements: Yes (b) an exclusive licence of severable improvements: Yes (c) a non-exclusive licence of severable improvements: Yes (d) an assignment or exclusive licence of non-severable improvements: Yes
11. <b>Challenge to IPR</b>	Yes
12. <b>Severability</b>	Anti-competitive provisions may be severable. Argentine Civil Code section 1038; "the invalidity of a legal act may be complete or just partial. The partial invalidity of one of the provisions of a legal act, shall not effect the other valid provisions, provided that the provisions are separable. Anti-competitive provisions shall not affect validity of entire agreements."
<b><u>Part B - Distribution Agreements</u></b>	
1. <b>Legislation/Rules</b>	No specific legislation referred to.
2. <b>Regulation of Price</b>	(a) recommended sales prices: None (b) minimum sales prices: None (c) maximum sales prices: None
3. <b>Restrictions</b>	(a) territories: Yes (b) customers: Yes (c) customer groups: Yes
4. <b>Active/Passive Sales Restrictions</b>	Yes
5. <b>Non-compete provisions</b>	Yes, for a reasonable term (National Commission for the Defense of Competition). No specific provision for <b>non-compete</b> clauses in agreements: it is understood that the <b>non-compete</b> term can be no longer than five years if know how is transferred, or two years otherwise.

<b>6. Restrictions on competing products</b>	Yes, resellers may be restricted both generally and with respect to specific competing products.
<b>7. Severability</b>	See above, Part A -12

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## Intellectual Property and Competition Law

### Australia

Prepared by Lex Mundi member firm Clayton Utz

<p><b><u>Part A - Technology Licenses</u></b></p>	
<p><b>1. Legislation/Rules</b></p>	<p><u>Trade Practices Act 1974 (CTH)</u> (“TPA”)</p> <p><u>Patents Act 1990 (CTH)</u></p> <p>TPA Section 51 (3) provides specific exemption for certain intellectual property transactions.</p> <p>Note: significant reforms are proposed to provisions of the TPA and Patents Act. (Answers below based on law as of 2 September 2005).</p>
<p><b>2. Market Shares</b></p>	<p>No <b>safe harbour</b> as such in Australia. Some provisions of TPA subject to competition tests in which market share will be relevant. Informal <b>safe harbour</b> employed by the Australian Competition and Consumer Commission in the case of mergers or joint ventures.</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights, generally: Licence of a patent beyond patent term may be terminated after expiry of that term upon 3 months notice (Patents Act). Copyright, patents and registered designs: licence beyond term of protection prohibited if substantially lessens competition in a market (TPA).</p> <p>(b) know-how: So long as know-how remains secret (except in cases of wrongful disclosure by a licensee). Note: theoretically long term licence of confidential information could lessen competition and therefore contravene the TPA.</p>
<p><b>4. Regulation of Price</b></p>	<p>Except in cases of a misuse of market power the TPA section 51 (3) is likely to protect licences of patent, copyright or registered designs containing provisions regulating price unless there is a misuse of market power. Section 51 (3) unlikely to exempt trademark licences containing such a provision. Resale price maintenance is prohibited, however unlikely to affect licences unless these are coupled with a distribution agreement.</p>
<p><b>5. Limitation of Production</b></p>	<p>Except in cases of a misuse of market power the TPA section 51 (3) is likely to protect licences of patent, copyright or registered designs containing provisions limiting output unless these is a misuse of market power. Section 51 (3) does not exempt trademark licences containing such a provision.</p>

<p><b>6. Tie-in Clauses</b></p>	<p>May be prohibited if the tied goods or services are not protected by the licensed intellectual property right (Patents Act; TPA)</p> <p>In other cases permissibility will depend upon whether the tie-in has the purpose or likely effect of substantially lessening competition in a market.</p>
<p><b>7. General Restrictions</b></p>	<p>(a) specified customers: Generally, yes. Except in the case of trademarks, such restrictions are likely to be exempted (TPA s.51 (3)) except in cases of alleged misuse of market power. s.51(3) is unlikely to apply to trademarks although it is unlikely that any of the competition tested provisions of the TPA would be contravened unless the licensor and licensee were competitors which may give rise to a <i>per se</i> exclusive dealing contravention (TPA).</p> <p>(b) customer groups: Generally, yes. Except in the case of trademarks, such restrictions are likely to be exempted (TPA s.51 (3)) except in cases of alleged misuse of market power. s.51(3) is unlikely to apply to trademarks although it is unlikely that any of the competition tested provisions of the TPA would be contravened unless the licensor and licensee were competitors which may give rise to a <i>per se</i> exclusive dealing contravention (TPA).</p> <p>(c) field of use: Generally, yes. Except in the case of trademarks, such restrictions are likely to be exempted (TPA s.51 (3)) except in cases of alleged misuse of market power. s.51(3) is unlikely to apply to trademarks although it is unlikely that any of the competition tested provisions of the TPA would be contravened unless the licensor and licensee were competitors which may give rise to a <i>per se</i> exclusive dealing contravention (TPA).</p> <p>(d) territory: Generally, yes. Except in the case of trademarks, such restrictions are likely to be exempted (TPA s.51 (3)) except in cases of alleged misuse of market power. s.51(3) is unlikely to apply to trademarks although it is unlikely that any of the competition tested provisions of the TPA would be contravened unless the licensor and licensee were competitors which may give rise to a <i>per se</i> exclusive dealing contravention (TPA).</p>
<p><b>8. Active/Passive Sales Restrictions</b></p>	<p>Such restrictions likely to be exempt from prohibitions of the TPA (s.51(3)) except in the case of misuse of market power.</p>
<p><b>9. Restriction on exploitation of Licensee IP</b></p>	<p>Such restrictions not exempt by s.51(3) of the TPA. Between competitors such restrictions may give rise to <i>per se</i> exclusive dealing contravention of the TPA. May also amount to misuse of market power. If restriction has the purpose or likely effect of substantially lessening competition then would contravene competition tested provisions of the TPA.</p>
<p><b>10. Improvements</b></p>	<p>(a) an assignment of severable improvements: Will contravene the TPA if gives rise to a substantial lessening of competition. Not exempt under section 51 (3) (TPA).</p> <p>(b) an exclusive licence of severable improvements: Will contravene the TPA if gives rise to a substantial lessening of competition. Between competitors such restriction may be prohibited regardless of effect on competition. Not exempt under section 51 (3) (TPA).</p>

	<p>(c) a non-exclusive licence of severable improvements: Not generally exempted by section 51 (3) (TPA) but unlikely to give rise to substantial lessening of competition or misuse of market power and therefore likely to be permissible.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Not exempt under section 51 (3) (TPA). Will contravene the TPA if gives rise to a substantial lessening of competition. Between competitors such restriction may be prohibited regardless of effect on competition.</p>
11. Challenge to IPR	Not exempted by section 51 (3) (TPA) but no express prohibition within the TPA. Will contravene if substantially lessens competition or amounts to a misuse of market power.
12. Severability	Determined in accordance with ordinary contractual principles applicable to severance of clauses.
<b><u>Part B - Distribution Agreements</u></b>	
1. Legislation/Rules	<u>Trade Practices Act 1974 (CTH)</u> ("TPA")
2. Regulation of Price	<p>(a) recommended sales prices: Permissible provided they are genuinely only recommended prices.</p> <p>(b) minimum sales prices: <b>Per se</b> prohibition under the TPA.</p> <p>(c) maximum sales prices: Permissible (theoretically possible to amount to a misuse of market power in extreme circumstances).</p>
3. Restrictions	<p>(a) territories: Between competitors such restrictions may give rise to a <b>per se</b> contravention of the TPA (will depend on the precise characterisation of the arrangement). Otherwise, may contravene the TPA if substantially lessens competition in a market.</p> <p>(b) customers: Between competitors such restrictions may give rise to a <b>per se</b> contravention of the TPA (will depend on the precise characterisation of the arrangement). Otherwise, may contravene the TPA if substantially lessens competition in a market.</p> <p>(c) customer groups: Between competitors such restrictions may give rise to a <b>per se</b> contravention of the TPA (will depend on the precise characterisation of the arrangement). Otherwise, may contravene the TPA if substantially lessens competition in a market.</p>
4. Active/Passive Sales Restrictions	Between competitors such restrictions may give rise to a <b>per se</b> contravention of the TPA (will depend on the precise characterisation of the arrangement). Otherwise, may contravene the TPA if substantially lessens

	competition in a market.
<b>5. Non-compete provisions</b>	Usually a matter to be determined in accordance with ordinary contractual principals of restraint of trade provisions - may contravene the TPA if substantially lessens competition in a market.. Between competitors such provisions may give rise to a <i>per se</i> contravention of the TPA (will depend on the precise characterisation of the arrangement).
<b>6. Restrictions on competing products</b>	Between competitors such restrictions may give rise to a <i>per se</i> contravention of the TPA (will depend on the precise characterisation of the arrangement). Otherwise, may contravene the TPA if substantially lessens competition in a market.
<b>7. Severability</b>	Determined in accordance with ordinary contractual principles applicable to severance of clauses.

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## Intellectual Property and Competition Law

### Belgium

Prepared by Lex Mundi member firm Liedekerke Wolters Waelbroeck Kirkpatrick

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union*</i>  Competition Act of 5 August 2001 - Mirrors Art 81 of the EC Treaty. Prohibits any undertakings “whose object or effect is to significantly prevent, restrain or distort competition in the Belgian market concerned or in a substantial part of it.”
<b>2. Market Shares</b>	Belgian Provisions apply regardless of market share.  See <i>European Union*</i>
<b>3. Duration</b>	(a) & (b) See <i>European Union*</i>
<b>4. Regulation of Price</b>	See <i>European Union*</i>
<b>5. Limitation of Production</b>	See <i>European Union*</i>
<b>6. Tie-in Clauses</b>	See <i>European Union*</i>
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union*</i>
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union*</i>
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>11. Challenge to IPR</b>	See <i>European Union*</i>
<b>12. Severability</b>	If the agreement contains a severability clause See <i>European Union*</i> .

	If the agreement does not contain a severability clause, it will be up to the courts to decide whether the object or the effect of the anti-competitive provisions “significantly prevent, restrain or distort competition in the Belgian market concerned or in a substantial part of it”. If this is the case, the entire agreement will be void, unless an exemption can be granted.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union</i> *
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>European Union</i> *
<b>3. Restrictions</b>	(a) (b) & (c) See <i>European Union</i> *
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>5. Non-compete provisions</b>	See <i>European Union</i> *
<b>6. Restrictions on competing products</b>	See <i>European Union</i> *
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Bolivia

Prepared by Lex Mundi C.R. & F. Rojas – Abogados

<b><u>Part A - Technology Licenses</u></b>	
<p><b>1. Legislation/Rules</b></p>	<p><u>Decision 486 of the Commission of the Andean Community</u> (Regional Supranational Regulation comprising Bolivia, Peru, Ecuador, Colombia and Venezuela).</p> <p>Patents: See Article 61 to 69.</p> <p>Article 66: Compulsory licences may be granted where practices are noted that are detrimental to the exercise of free competition especially where they constitute an abuse by a patent owner of a dominant position in the market. The need to correct anti-competitive practices shall be taken into account in determining the amount of remuneration to be paid in such cases.</p> <p>Trade Marks: Articles 161 to 164 – the competent National Authority shall not register any trade mark licensing agreement, Assignment or Transfer that does not conform to Andean Community or domestic anti-trust law.</p> <p><u>Decision 291 of the Commission of the Cartagena Agreement</u> (Andean Community) - Regime for the Common Treatment of Foreign Capital and Trademarks, Patents, Licensing Agreements and Royalties.*</p> <p><u>Political Constitution. Articles 134, 142 and 233</u></p>
<p><b>2. Market Shares</b></p>	<p>N/A</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights, generally: The maximum duration is until the intellectual property right expires.</p> <p>(b) know-how: A licence may last for so long as the know-how remains secret.</p>
<p><b>4. Regulation of Price</b></p>	<p>Such restrictions likely to be prohibited by Decision 291.*</p>
<p><b>5. Limitation of Production</b></p>	<p>Dependent on will of the parties - no mandatory regulation exists. May be prohibited under Decision 291.*</p>

<b>6. Tie-in Clauses</b>	Dependent on will of the parties - no mandatory regulation exists. May be prohibited under Decision 291.*
<b>7. General Restrictions</b>	<p>(a) Specified customers: Yes.*</p> <p>(b) Customer groups: Yes.*</p> <p>(c) Field of use: Likely to be prohibited under Decision 291.*</p> <p>(d) Territory: Likely to be prohibited under Decision 291.*</p>
<b>8. Active/Passive Sales Restrictions</b>	May be prohibited under Decision 291.*
<b>9. Restriction on exploitation of Licensee IP</b>	May be prohibited under Decision 291.*
<b>10. Improvements</b>	<p>(a) An assignment of severable improvements: May be prohibited under Decision 291.*</p> <p>(b) An exclusive licence of severable improvements: May be prohibited under Decision 291.*</p> <p>(c) A non-exclusive licence of severable improvements: Yes.*</p> <p>(d) An assignment or exclusive licence of non-severable improvements: May be prohibited under Decision 291.*</p>
<b>11. Challenge to IPR</b>	Licensor may terminate the agreement, provided such right is expressly contemplated therein. Otherwise the licensor shall require a decision of the competent authority.
<b>12. Severability</b>	Anti-competitive provisions included in the agreement are capable of being severed.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<u>Bolivian Commerce Code.</u>
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: No</p> <p>(b) minimum sales prices: No</p> <p>(c) maximum sales prices: No</p>
<b>3. Restrictions</b>	(a) territories: Yes, this is left to the determination of the parties.

	(b) customers: Yes, this is left to the determination of the parties. (c) customer groups: Yes, this is left to the determination of the parties.
<b>4. Active/Passive Sales Restrictions</b>	Yes, this is left to the determination of the parties.
<b>5. Non-compete provisions</b>	Yes, this is left to the determination of the parties.
<b>6. Restrictions on competing products</b>	Yes.
<b>7. Severability</b>	See above, Part A - 12

\* These responses are based on submissions from Bolivia, Columbia and Peru; members countries of the Andean Community and signatories to the Cartagena Agreement.

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## Intellectual Property and Competition Law

### Brazil

Prepared by Lex Mundi member firm Demarest e Almeida

<b>Part A - Technology Licenses</b>	
<b>1. Legislation/Rules</b>	Constitution of Brazil, promulgated in 1988. Articles 170, 173, and 174.  Law No. 8,884 of June 11, 1994 (Brazilian Antitrust Law)
<b>2. Market Shares</b>	No
<b>3. Duration</b>	(a) intellectual property rights, generally: Duration of the IP right. If an agreement is to be registered payment for use of the technology is limited to 5 years extendible for a further 5 years.  (b) know-how: So long as the know-how remains secret.
<b>4. Regulation of Price</b>	A licensor can suggest a price based on market price experience but cannot regulate licensee's actual selling price.
<b>5. Limitation of Production</b>	No.
<b>6. Tie-in Clauses</b>	Yes, a licensor can establish that certain goods, services and raw materials shall be purchased from licensor or from whomever he indicates.
<b>7. General Restrictions</b>	(a) Specified customers: No.  (b) Customer groups: No.  (c) Field of use: Yes, analysed on a case by case basis to confirm that it is permitted.  (d) Territory: Yes.
<b>8. Active/Passive Sales Restrictions</b>	Yes, a license can restrict the sales to the licensee's territory.
<b>9. Restriction on exploitation of Licensee IP</b>	No, a licensee is the owner of the improvements he develops.

10. <b>Improvements</b>	<p>(a) An assignment of severable improvements: No</p> <p>(b) An exclusive licence of severable improvements: No</p> <p>(c) A non-exclusive licence of severable improvements: No</p> <p>(d) An assignment or exclusive licence of non-severable improvements: No</p> <p>The Licensor cannot, in any circumstances, obligate the Licensee to assign or licence any improvement he develops.</p>
11. <b>Challenge to IPR</b>	Yes.
12. <b>Severability</b>	Anti-competitive provisions are severable; however, the agreement must include a standard severability provision.
<b><u>Part B - Distribution Agreements</u></b>	
1. <b>Legislation/Rules</b>	<p><u>Brazilian Anti-trust Act Law, 8.884/94 ("Brazilian Anti-trust Act")</u></p> <p>Acts which may potentially produce the following effects shall be deemed a violation of the economic order:</p> <p>(1) limit, constrain or anyway injure open competition or free enterprise;</p> <p>(2) control a relevant market of a certain product or service;</p> <p>(3) increase profits on a discretionary basis; and</p> <p>(4) abuse one's market control.</p>
2. <b>Regulation of Price</b>	<p>(a) recommended sales prices: No restrictions.</p> <p>(b) minimum sales prices: No restriction <i>per se</i>, however may violate Brazilian Anti-trust Act provisions: minimum sales prices could be deemed a violation of the economic order if they could result, even potentially, in any of the effects listed in Part B -1, above.</p> <p>(c) maximum sales prices: No restriction <i>per se</i>, however may violate Brazilian Anti-trust Act provisions: maximum sales prices could be deemed a violation of the economic order if they could result, even potentially, in any of the effects listed in Part B-1, above.</p>
3. <b>Restrictions</b>	<p>(a) Territories: In principle, no prohibition on such restriction but such provisions must comply with the Brazilian Anti-trust Act and could be deemed a violation of the economic order if they could result, even potentially, in any of the effects listed in Part B-1, above.</p>

	(b) Customers: see (a) above. (c) Customer groups: see (a) above.
<b>4. Active/Passive Sales Restrictions</b>	In principle, no restriction but provisions must comply with the Brazilian Anti-trust Act (see Part B - 1, above).
<b>5. Non-compete provisions</b>	Yes, provided these are limited in space and time. Five years from termination of the agreement is considered as a reasonable time for such provisions. Territorial restrictions are assessed by the Brazilian Anti-trust Authorities on a case by case basis.
<b>6. Restrictions on competing products</b>	In principle, no restriction but provisions must comply with the Brazilian Anti-trust Act (see Part B - 1, above).
<b>7. Severability</b>	See above, Part A -12

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## Intellectual Property and Competition Law

### Bulgaria

Prepared by Penkov, Markov & Partners

<b>Part A - Technology Licenses</b>	
1. <b>Legislation/Rules</b>	<p><u>Copyright and neighbouring rights act (CNRA)</u></p> <p><u>The marks and geographical indications act (MGIA)</u></p> <p><u>The patents act (PA)</u></p> <p><u>The industrial design act (IDA)</u></p> <p><u>The Topographies of integrated circuits act (TICA)</u></p> <p><u>The protection of new plant varieties and animal breeds (PNPVABA)</u></p>
2. <b>Market Shares</b>	N/A
3. <b>Duration</b>	<p>(a) intellectual property rights, generally:</p> <p>Copyright: Contracts for use of copyright works may not exceed 10 years in duration. Contracts of a longer term shall remain in force for 10 years only (CNRA). (Limitation not applicable to contracts for architectural designs).</p> <p>Trademarks/industrial designs; MGIA and IDA do not prescribe maximum duration for a licence.</p> <p>(b) know-how: No legal restriction, parties free to negotiate terms of agreement.</p>
4. <b>Regulation of Price</b>	Regulation could be considered unfair competition.
5. <b>Limitation of Production</b>	No explicit provisions relating to this matter. Subject only to agreement between parties.
6. <b>Tie-in Clauses</b>	No explicit provisions relating to this matter. Subject only to agreement between parties.
7. <b>General Restrictions</b>	<p>(a) specified customers: No, restriction prohibited.</p> <p>(b) customer groups: No, restriction prohibited.</p>

	(c) field of use: Yes, may be restricted. (d) territory: Yes, may be restricted.
<b>8. Active/Passive Sales Restrictions</b>	Such provisions not explicitly excluded in law - subject to only to agreement between the parties.
<b>9. Restriction on exploitation of Licensee IP</b>	N/A
<b>10. Improvements</b>	(a) (b) (c) & (d) No explicit provisions in Bulgarian legislation. Considered to be the subject of negotiation between the parties.
<b>11. Challenge to IPR</b>	No explicit provision in Bulgarian legislation. Such a clause may be included in the licence agreement.
<b>12. Severability</b>	Anti-competitive provisions may be severed provided there is an explicit severability clause included in the agreement or where the court rules that the parties would have entered into the agreement even without those particular provisions.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<u>Protection of Competition Act</u>
<b>2. Regulation of Price</b>	(a) (b) & (c) No restriction on regulation of price.
<b>3. Restrictions</b>	(a) territories: Yes, may be restricted. (b) customers: No, restriction prohibited. (c) customer groups: No, restriction prohibited.
<b>4. Active/Passive Sales Restrictions</b>	Subject only to agreement between the parties.
<b>5. Non-compete provisions</b>	No, prohibited under the <u>Protection of Competition Act</u> and considered null and void.
<b>6. Restrictions on competing products</b>	No, prohibited under the <u>Protection of Competition Act</u> and considered null and void.
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Chile

Prepared by Lex Mundi member firm Claro & Cia., Abogados

<b>Part A - Technology Licenses</b>	
<b>1. Legislation/Rules</b>	<p><u>Civil Code</u></p> <p><u>Commercial Code</u></p> <p><u>Antitrust Act</u> - prohibits any action or agreement that impedes, restricts or hinders free competition, or that it is aimed to produce such effects. The following acts and agreements are deemed by the Antitrust Act as impeding, restricting or hindering free competition: (i) those aimed to fix purchase or sale prices, limit the production or assign areas or quotas of the market, abusing the power that such acts or agreements give; and (ii) the abusive exploitation of a dominant position whether by means of fixing purchase or sale prices, tying the sale of a product to another, assigning areas or quotas of the market or imposing other similar abuses.</p> <p><u>Consumer Protection Act</u></p>
<b>2. Market Shares</b>	N/A
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: There is no legal restriction. A license may last for so long as the underlying intellectual property rights receive legal protection.</p> <p>(b) know-how: There is no legal restriction. A license may last for so long as the underlying know-how receives legal protection.</p>
<b>4. Regulation of Price</b>	Generally, no. Such a conduct or agreement may be deemed as against the provisions of the Antitrust Act (Decree Law No. 211 of 1973, as amended). In particular, no price regulation is acceptable, whether directly or indirectly, when this involves an abuse of the power that such price regulation gives.
<b>5. Limitation of Production</b>	Generally no. Such a conduct or agreement may be deemed as against the provisions of the Antitrust Act (Decree Law No. 211 of 1973, as amended). An act or agreement limiting production which involves an abuse of the power that such act or agreement gives is likely to be considered by the Antitrust Court as impeding, restricting or hindering free competition.

<b>6. Tie-in Clauses</b>	<p>Generally, not permissible under the Antitrust Act. Note: Sale of "packages" of products is permissible (i.e. cable tv and internet access), and sometimes it is difficult to distinguish between these and "tie in" clauses. The final determination on this matter will depend on the particulars of the relevant market and the effect of such act or agreement in it.</p>
<b>7. General Restrictions</b>	<p>(a) (b) (c) &amp; (d) Yes. Covenants and restrictions of this nature, which are more directed on the party to the agreement than on the markets, may be considered as reasonable consideration for the rights and privileges received pursuant to the license. But note that there is no specific case law on this matter.</p> <p>Note: the case law also takes into account whether the relevant market is concentrated or competitive (other supplier, substitute products, etc.) when considering whether a territorial restriction (which, when looked from the other end, may be an implicit assignment of an area of the market) is or not against the Antitrust Act.</p>
<b>8. Active/Passive Sales Restrictions</b>	<p>Yes. See reference to territorial restrictions above (Part A - 7)</p>
<b>9. Restriction on exploitation of Licensee IP</b>	<p>If the intellectual property and R&amp;D is not related or ancillary to the license: it is difficult to argue that this type of restriction or covenant is reasonable. Likely that the Antitrust Court would consider it an abuse of dominant position - Note: there is no specific case law on this matter.</p> <p>Intellectual property and R&amp;D related or ancillary to the license: in the respondents' opinion, the licensor may impose exploitation restrictions and may provide that such intellectual property and R&amp;D will be proprietary of the licensor - Note: there is no specific case law on this matter.</p>
<b>10. Improvements</b>	<p>(a) (b) (c) &amp; (d) Yes, but note that there is no specific case law on these points.</p>
<b>11. Challenge to IPR</b>	<p>Yes, note that there is no specific case law on these points.</p>
<b>12. Severability</b>	<p>Yes, to the extent they may be severed without affecting the core meaning and substance of the agreement.</p>
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<p>No specific legislation referred to.</p>
<b>2. Regulation of Price</b>	<p>(a) (b) &amp; (c) An act or agreement recommending or fixing the minimum and/or maximum sales prices which involves an abuse of the power that</p>

	such act or agreement gives is likely to be considered by the Antitrust Court as impeding, restricting or hindering free competition.
<b>3. Restrictions</b>	<p>(a) (b) &amp; (c) Yes. Covenants and restrictions of this nature, which are more directed on the party to the agreement than on the markets, may be considered as reasonable consideration for the rights and privileges received pursuant to the applicable agreement.</p> <p>Note: the case law also takes into account whether the relevant market is concentrated or competitive (other supplier, substitute products, etc.) when considering whether a territorial restriction (which may be an implicit assignment of an area of the market) is or is not against the Antitrust Act.</p>
<b>4. Active/Passive Sales Restrictions</b>	Yes.
<b>5. Non-compete provisions</b>	Yes, provided the relevant market is competitive (other supplier, substitute products, etc.) and the <b>non-compete</b> provisions are reasonable in subject matter (similar products) and territorial scope (limited area). In the case of <b>non-compete</b> provisions that extend beyond the life of the agreement, they shall have a reasonable justification (sometimes difficult to find) and be limited in duration (no more than five years). But note that there is no specific case law on this matter, and these principles arise from <b>non-compete</b> provisions included in M&A agreements.
<b>6. Restrictions on competing products</b>	Yes, to the extent the restriction refers to similar products. Note: prior case law requires that the products be identical. Even though such decisions have not been expressly overruled, the criteria should apply to competitive (i.e. substitute) but not necessarily identical products.
<b>7. Severability</b>	Yes, to the extent they may be severed without affecting the core meaning and substance of the agreement.

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## Intellectual Property and Competition Law

### China

Prepared by Lex Mundi member firm Jun He Law Offices

<b><u>Part A - Technology Licenses</u></b>	
1. <b>Legislation/Rules</b>	<u>Regulations on Administration of Import and Export Technologies</u> (the "Regulations")
2. <b>Market Shares</b>	N/A
3. <b>Duration</b>	<p>(a) intellectual property rights, generally: There is no specific regulation on the maximum duration for a licence of intellectual property rights. In practice, the license can be valid until expiry, lapse or declared invalidity of the intellectual property rights.</p> <p>(b) know-how: There is no specific regulation for the maximum duration of know-how licences.</p>
4. <b>Regulation of Price</b>	According to the Regulations, clauses unreasonably restricting the price of products of a licensee or assignee shall not be included in a contract for the import or export of technologies.
5. <b>Limitation of Production</b>	According to the Regulations, clauses unreasonably restricting the quantity products produced by a licensee or assignee shall not be included in a contract for the import or export of technologies.
6. <b>Tie-in Clauses</b>	According to the Regulations, clauses unreasonably restricting the channels or sources for a licensee or assignee to purchase raw materials, spare parts, products or equipment or requiring the assignee or licensee to accept such conditions which are not indispensable for the import of the technologies as purchasing unnecessary technologies, raw materials, products, equipment or services shall not be included in a contract for the import of technologies.
7. <b>General Restrictions</b>	<p>(a) Specified customers: There is no specific regulation on this issue.</p> <p>(b) Customer groups: There is no specific regulation on this issue.</p> <p>(c) Field of use: There is no specific regulation on this issue.</p> <p>(d) Territory: There is no specific regulation on this issue.</p>
8. <b>Active/Passive Sales</b>	No regulation on this issue. In practice, a licensor will often include such

<b>Restrictions</b>	restrictions.
<b>9. Restriction on exploitation of Licensee IP</b>	According to the Regulations, the licensor shall not restrict the assignee or licensee to make improvement on the technologies or to use such improved technologies.
<b>10. Improvements</b>	<p>(a) An assignment of severable improvements: No specific regulation on this issue.</p> <p>(b) An exclusive licence of severable improvements: No specific regulation on this issue.</p> <p>(c) A non-exclusive licence of severable improvements: No specific regulation on this issue.</p> <p>(d) An assignment or exclusive licence of non-severable improvements: No specific regulation on this issue.</p>
<b>11. Challenge to IPR</b>	The licensor may terminate the agreement if there is such a provision in the license agreement.
<b>12. Severability</b>	Anti-competitive provisions will be invalid if they violate PRC laws or regulations; however, these will not result in the whole agreement being void.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	No specific legislation referred to.
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: Permissible.</p> <p>(b) minimum sales prices: Provisions regarding minimum sales prices may be deemed unfair competition.</p> <p>(c) maximum sales prices: Provisions regarding maximum sales prices may be deemed unfair competition.</p>
<b>3. Restrictions</b>	<p>(a) territories: Such restrictions may be deemed unfair competition.</p> <p>(b) customers: Such restrictions may be deemed unfair competition.</p> <p>(c) customer groups: Such restrictions may be deemed unfair competition.</p>
<b>4. Active/Passive Sales Restrictions</b>	No specific regulation on this issue.

<b>5. Non-compete provisions</b>	There is no specific regulation on this issue; however, such provisions may be deemed as unfair and thus invalid by the courts if there is no corresponding compensation.
<b>6. Restrictions on competing products</b>	Yes
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Colombia

Prepared by Lex Mundi member firm Brigard & Urrutia Abogados

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	<p><u>Colombian Code of Commerce</u>, articles 556, 557 &amp; 594</p> <p><u>Decision 486 of the Andean Community</u>, articles 57, 162 &amp; 163</p> <p><u>Decision 291 of 1992 of the Cartagena Agreement</u> and <u>Decree 259 of 1992</u> - agreements for licensing technology, technical assistants, technical services, trademark and patent licensing and other technology agreements must be registered with the Ministry of Foreign Trade. The Ministry of Foreign Trade will not register any agreement which contains provisions that restrict the use of the products obtained by the application or use of the technology that is transferred.</p> <p><u>Law 155 of 1959</u>, <u>Decree 2153 of 1992</u> and <u>Law 256 of 1996</u> - Govern unfair competition practices and behaviours which may restrict competition.</p>
<b>2. Market Shares</b>	No
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: Columbian regulations do not provide for a maximum duration of the licences.</p> <p>(b) know-how: Columbian regulations do not provide for maximum duration of know-how licenses.</p>
<b>4. Regulation of Price</b>	Prohibited under Decision 291
<b>5. Limitation of Production</b>	Prohibited under Decision 291
<b>6. Tie-in Clauses</b>	Prohibited under Decision 291
<b>7. General Restrictions</b>	<p>(a) specified customers: Columbian regulations do not provide for such restrictions.</p> <p>(b) customer groups: Columbian regulations do not provide for such restrictions.</p> <p>(c) field of use: Such restrictions prohibited under Decision 291</p> <p>(d) territory: Such restrictions prohibited under Decision 291</p>

<b>8. Active/Passive Sales Restrictions</b>	Restriction prohibited under decision 291
<b>9. Restriction on exploitation of Licensee IP</b>	Restriction prohibited under decision 291
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: Such obligations prohibited under Decision 291</p> <p>(b) an exclusive licence of severable improvements: Such obligations prohibited under Decision 291</p> <p>(c) a non-exclusive licence of severable improvements: Such obligations prohibited under Decision 291</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Such obligations prohibited under Decision 291</p>
<b>11. Challenge to IPR</b>	Columbian regulations do not provide for termination by the licensor where a licensee challenges the licensor's right to that IP.
<b>12. Severability</b>	Any agreement that restricts competition is deemed to have an illegal purpose, therefore is deemed to be void in law.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<u>Law 155 of 1959</u> , <u>Decree 2153 of 1992</u> and <u>Law 256 of 1996</u>
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: Price fixing may be deemed anti-competitive under applicable regulations.</p> <p>(b) minimum sales prices: Price fixing may be deemed anti-competitive under applicable regulations.</p> <p>(c) maximum sales prices: Price fixing may be deemed anti-competitive under applicable regulations.</p>
<b>3. Restrictions</b>	<p>(a) territories: Market segmentation may be deemed anti-competitive under applicable regulations.</p> <p>(b) customers: Market segmentation may be deemed anti-competitive under applicable regulations.</p> <p>(c) customer groups: Market segmentation may be deemed anti-competitive under applicable regulations.</p>

<b>4. Active/Passive Sales Restrictions</b>	Columbian regulations do not set forth any restrictions regarding <b>active</b> or <b>passive sales</b> in supply/distribution agreements.
<b>5. Non-compete provisions</b>	May be deemed illegal if they restrict competition.
<b>6. Restrictions on competing products</b>	May be deemed illegal if they restrict competition.
<b>7. Severability</b>	See above, Part A - 12.

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## Intellectual Property and Competition Law

### Costa Rica

Prepared by Lex Mundi member firm Facio & Cañas

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	<p><u>Law of Trademark &amp; Other Distinctive Signs no. 7978</u> (effective since May 9, 2000) and it's by law (effective since April 4, 2002)</p> <p><u>Law of Procedures of Observance of Intellectual Property Right no 8039</u> (effective since October 27, 2000)</p>
<b>2. Market Shares</b>	N/A
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: Duration not restricted - term of licence established by agreement between the parties.</p> <p>(b) know-how: Know-how licence is not contemplated in Costa Rican legislation. Therefore no regulation in this field.</p>
<b>4. Regulation of Price</b>	Yes, the Licensor may regulate the sale price, the profit margin, the number of units to be sold, etc.
<b>5. Limitation of Production</b>	Yes.
<b>6. Tie-in Clauses</b>	Yes, subject to acceptance by the licensee to such terms in the agreement.
<b>7. General Restrictions</b>	<p>(a) specified customers: Yes, subject to agreement between the parties.</p> <p>(b) customer groups: Yes, subject to agreement between the parties.</p> <p>(c) field of use: Yes, subject to agreement between the parties.</p> <p>(d) territory: Yes, subject to agreement between the parties.</p>
<b>8. Active/Passive Sales Restrictions</b>	Generally, yes.
<b>9. Restriction on exploitation of Licensee IP</b>	Generally, yes.
<b>10. Improvements</b>	(a) an assignment of severable improvements: obligation on Licensee

	<p>to grant Licensor such assignments/licences is not permitted.</p> <p>(b) an exclusive licence of severable improvements: obligation on Licensee to grant Licensor such assignments/licences is not permitted.</p> <p>(c) a non-exclusive licence of severable improvements: obligation on Licensee to grant Licensor such assignments/licences is not permitted.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: obligation on Licensee to grant Licensor such assignments/licences is not permitted.</p>
<b>11. Challenge to IPR</b>	Yes
<b>12. Severability</b>	Inclusion of anti-competitive provisions could make the agreement void. It is advisable to explicitly contemplate such a situation in the agreement.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	No specific legislation referred to.
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: No restriction.</p> <p>(b) minimum sales prices: No restriction.</p> <p>(c) maximum sales prices: No restriction.</p>
<b>3. Restrictions</b>	<p>(a) territories: Yes restriction permissible.</p> <p>(b) customers: Yes restriction permissible.</p> <p>(c) customer groups: Yes restriction permissible.</p>
<b>4. Active/Passive Sales Restrictions</b>	Yes, restriction permissible.
<b>5. Non-compete provisions</b>	Yes, both during and after the term of the agreement.
<b>6. Restrictions on competing products</b>	Yes, permissible both generally and with respect to specific competing products.
<b>7. Severability</b>	See above, part A - 12

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## Intellectual Property and Competition Law

### Cyprus

Prepared by Lex Mundi member firm Dr. K. Chrysostomides & Co LLC

<b>Part A - Technology Licenses</b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union</i> *  <u>Cyprus Codified Contract Law Cap. 149.</u>  <u>The Protection Of Competition Law 1989.</u>  <u>Cyprus Trademarks Law Cap. 268 (as amended by law no. 176 (I)/2000)</u>
<b>2. Market Shares</b>	See <i>European Union</i> *
<b>3. Duration</b>	(a) & (b) See <i>European Union</i> *
<b>4. Regulation of Price</b>	See <i>European Union</i> *
<b>5. Limitation of Production</b>	See <i>European Union</i> *
<b>6. Tie-in Clauses</b>	See <i>European Union</i> *
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union</i> *  May be possible - such a clause may be valid for the duration of the agreement or in some cases for a maximum period of one year from termination or lapse of the agreement.
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>11. Challenge to IPR</b>	See <i>European Union</i> *  Yes, provided there is an express termination provision to that effect in the

	agreement.
12. Severability	See <i>European Union</i> .*
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. Legislation/Rules	See <i>European Union</i> *
2. Regulation of Price	(a) (b) & (c) See <i>European Union</i> *
3. Restrictions	(a) (b) & (c) See <i>European Union</i> *
4. Active/Passive Sales Restrictions	See <i>European Union</i> *
5. Non-compete provisions	See <i>European Union</i> *
6. Restrictions on competing products	See <i>European Union</i> *
7. Severability	See above, Part A - 12

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## Intellectual Property and Competition Law

### Denmark

Prepared by Lex Mundi member firm Kromann Reumert

<b>Part A - Technology Licenses</b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. Legislation/Rules	<p>See <i>European Union*</i></p> <p><u>Danish Competition Act - Consolidated Act No. 785 of 8 august 2005</u></p> <p><u>Executive Order no. 622 of 10 June 2004</u> (applying Regulation 772/2004 EC to Danish Competition Act)</p> <p>Danish Competition Act to be interpreted and applied in accordance with the EU regulation and Case-law of the ECJ</p>
2. Market Shares	<p>See <i>European Union*</i></p> <p>In addition, the Danish Competition Act contains a <b>de minimis</b> rule stating that the prohibition in section 6(1) (the Danish parallel to article 81(1) of the EC Treaty) does not apply provided that the undertakings concerned have (i) an aggregate annual turnover of less than DKK 1bn and an aggregate share of less than 10 per cent of the product or service market concerned, or (ii) an aggregate annual turnover of less than DKK 150m. These exceptions shall not apply in cases where (a) undertakings or associations of undertakings agree, coordinate or determine prices, profits etc. for the sale or resale of goods or services; or (b) two or more undertakings agree etc. to carry out or seek to carry out a preceding regulation of tenders etc. These exceptions apply even if the undertakings exceed the above thresholds in two consecutive years.</p> <p>Despite the aforementioned exceptions the prohibition of section 6(1) applies to an agreement between undertakings, a decision made by an association of undertakings, and a concerted practice between undertakings if the agreement etc., together with other similar agreements etc., restricts competition.</p>
3. Duration	(a) & (b) See <i>European Union*</i>
4. Regulation of Price	See <i>European Union*</i>
5. Limitation of Production	See <i>European Union*</i>

<b>6. Tie-in Clauses</b>	See <i>European Union</i> *
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union</i> *
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>11. Challenge to IPR</b>	See <i>European Union</i> *
<b>12. Severability</b>	See <i>European Union</i> *.  According to Section 6(5) of the Danish Competition Act, any agreements and decisions prohibited under Section 6(1)-(3) of the Act as anti-competitive shall, unless otherwise exempted, be void. However, it is recognized that it is only the actual provisions that violate the competition act which shall be void. Whether or not this results in the entire agreement being void depends on an individual assessment of the importance of the anti-competitive provisions to the entire agreement. Such assessment has to be carried out according to the principles of Danish contract law.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	<u>See <i>European Union</i>*</u>  <u>Danish Competition Act - Consolidated Act No. 785 of 8 august 2005</u>  <u>Executive Order no. 353 of 15 May 2000 (applying Regulation 772/2004 EC to Danish Competition Act)</u>
<b>2. Regulation of Price</b>	(a) (b) & (c)    See <i>European Union</i> *
<b>3. Restrictions</b>	(a) (b) & (c)    See <i>European Union</i> *
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>5. Non-compete provisions</b>	See <i>European Union</i> *

<b>6. Restrictions on competing products</b>	See <i>European Union</i> *
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Estonia

Prepared by Lex Mundi member firm LAWIN

<b>Part A - Technology Licenses</b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	<p>Regulation No. 297 of 25 September 2001 "Grant of Permission to enter into Technology Transfer Agreements Which Restrict or May Restrict Free Competition (<b>Block Exemption</b>)" (RT I 2001, 78, 463) – valid until 31 March 2006. ("Block Exemption")</p> <p><u>Estonian Competition Act</u></p> <p><u>Also see <i>European Union</i>*</u></p>
2. <b>Market Shares</b>	<p>See <i>European Union</i>*</p> <p>Competition Act - horizontal agreements exempt where parties joint market share is less than 10%; vertical agreements exempt where the parties individual market shares do not exceed 15% - unless these agreements contain <b>Hard core restrictions</b>.</p> <p>The Estonian <b>Block Exemption</b> will not apply to dominant undertakings (Competition Act: market share of more than 40% presumed to be dominant).</p>
3. <b>Duration</b>	<p>(a) See <i>European Union</i>*</p> <p>(b) See <i>European Union</i>*</p> <p>If a licence contains territorial restrictions the duration may not exceed 10 years from the date when the licensed product is first put on the market in the territory of Estonia by one of the licensees.</p>
4. <b>Regulation of Price</b>	No. Also see <i>European Union</i> *
5. <b>Limitation of Production</b>	No. Also see <i>European Union</i> *
6. <b>Tie-in Clauses</b>	Yes, insofar as the obligation is necessary for a technically proper exploitation of the licensed technology or to insure conformity to quality specifications applicable to the licensor and other licensees. Also see <i>European Union</i> *

<b>7. General Restrictions</b>	<p>(a) specified customers: Licence agreements may not restrict one party as to the customers they may service.</p> <p>(b) customer groups: Agreements may not prohibit one party from supplying certain classes of user or, with the aim of sharing customers.</p> <p>(c) field of use: exclusive and non-exclusive license agreements may restrict a licensee's exploitation of the licensed technology to one or more technical fields of application or to one or more product markets.</p> <p>(d) territory: exclusive and non-exclusive licence agreements may contain an obligation on the licensee not to exploit the licensed technology outside a specified territory.</p> <p>Also See <i>European Union</i>*</p>
<b>8. Active/Passive Sales Restrictions</b>	<p>A licensor may not restrict passive sales by a licensee. Also see <i>European Union</i>*</p>
<b>9. Restriction on exploitation of Licensee IP</b>	<p>No obligation to assign improvements can be imposed. An obligation to grant the licensor a non-exclusive licence in respect of licensee innovations can be imposed provided a reciprocal undertaking to grant an exclusive or non-exclusive licence of the licensor's innovations is granted. Also see <i>European Union</i>*</p>
<b>10. Improvements</b>	<p>(a), (b), (c) &amp; (d) - See <i>European Union</i>*</p> <p>See above part A - 9.</p>
<b>11. Challenge to IPR</b>	<p>Yes. Also see <i>European Union</i>*</p>
<b>12. Severability</b>	<p>Dependant on the nature of the agreement - if the anti-competitive provision is the very object of the agreement, the whole agreement is void; otherwise the provision may be capable of being severed.</p> <p>Also see <i>European Union</i>*</p>
<b><u>Part B - Distribution Agreements</u></b>	<p><i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i></p>
<b>1. Legislation/Rules</b>	<p>Estonian Competition Law in particular the Government of Republic Regulation No. 195 of 18 June 2002 "Grant of Permission to enter into Vertical Agreements Which Restrict or May Restrict Free Competition (group exception)", (RT I 2002, 52 330).</p> <p>Also see <i>European Union</i>*</p>

<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>European Union</i> *
<b>3. Restrictions</b>	(a) (b) & (c) See <i>European Union</i> *
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>5. Non-compete provisions</b>	See <i>European Union</i> *
<b>6. Restrictions on competing products</b>	See <i>European Union</i> * Not regulated in Estonia, but in principle yes.
<b>7. Severability</b>	See above (Part A - 12. Severability)

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## Intellectual Property and Competition Law

### European Union

Prepared by Lex Mundi member firm Maclay Murray & Spens LLP

<b>Part A - Technology Licenses</b>	
<p>1. Legislation/Rules</p>	<p>Articles 81 and 82 of the Treaty of Rome (EC Treaty): Prohibiting all agreements, which have as their object or effect the prevention, restriction or distortion of competition.</p> <p><u>Commission Regulation (EC) No 772/2004, the Technology Transfer Block exemption Regulations</u>: a '<b>block exemption</b>' from the provisions of Article 81 for 'technology transfer agreements'. 'Technology transfer agreement' (TTA) means a patent licensing agreement, a know-how licensing agreement, a software copyright licensing agreement or a mixed patent, know how or software copyright licensing agreement, including any such agreement containing provisions which relate to the sale and purchase of products or which relate to the licensing of other intellectual property rights, provided that those provisions do not constitute the primary object of the agreement and are directly related to the production of the contract products; Assignments of patents, know-how, software copyright or a combination thereof where part of the risk associated with the exploitation of the technology remains with the assignor, in particular where the sum payable in consideration of the assignment is dependent on the turnover obtained by the assignee in respect of products produced with the assigned technology, the quantity of such products produced or the number of operations carried out employing the technology, are also deemed to be technology transfer agreements [Reg. Art 1].</p> <p>The <b>Block exemption</b> covers all such TTA's provided they (a) are only between two undertakings [Reg. Art 2]; (b) do not contain certain defined types of provisions, which by intention or effect are anti-competitive [Reg. Art 4 "<b>Hard core</b>" restrictions]; and (c) do not exceed certain market share thresholds [Reg. Art 3].</p> <p>There is no general presumption that agreements which fall outside the <b>block exemption</b> restrict competition. All agreements or individual obligations that fall outside the scope of the <b>block exemption</b> must be <u>individually assessed and their anti-competitive and pro-competitive effects balanced</u>.</p> <p>An agreement containing a <b>Hard core</b> restriction will wholly fall outside the scope of the <b>block exemption</b>. Furthermore, when an agreement contains a <b>Hard core</b> restriction it can normally be presumed that they will be prohibited by Article 81 on an individual assessment of the anti-competitive and pro-competitive effects [Guidelines para 37].</p> <p>The regulation also details individual obligations which will not be <b>block</b></p>

	<p><b>exempt.</b> These are referred to as “<b>Excluded</b>” restrictions (Art 5). The exclusion of an individual obligation will not prevent the rest of the agreement from being <b>block exempt</b>.</p> <p>In individual assessment of licence agreements which are of the same nature as those covered by the <b>block exemption</b> but which are concluded between more than two undertakings, the Commission will apply by analogy the principles set out in the Regulation.</p>
<p><b>2. Market Shares</b></p>	<p><u>Treaty of Rome</u> (“<b>de minimus</b>” doctrine): Agreements which do not have an appreciable impact on competition or trade between Member States will fall outside the operation of Article 81(1). Under the <u>European Commission <b>de minimis</b> notice [C368/13]</u> there is a rebuttable presumption that agreements between Small and Medium-sized undertakings (less than 250 employees and an annual turnover less than €50 million, and/or an annual balance sheet total not exceeding €43 million) do not have an appreciable effect on trade [<u>Annex to Commission Recommendation 2003/280/EC Title 1 Art 2</u>].</p> <p>Other agreements are viewed as not appreciably restricting competition if the parties’ aggregate market share on any of the relevant markets affected by the agreement does not exceed: (i) 10 % between competitors; (ii) 15 % between non-competitors, or (iii) in cases where it is difficult to classify as between competitors or non-competitors, 10 % [C368/13 point 7]. These thresholds may be reduced to 5% if there is a cumulative effect on competition from the effect of parallel agreements between different suppliers and distributors within a market (unlikely where less than 30% of the relevant market is covered by agreements [C368/13 point 8]).</p> <p>Block exemption Market Shares: Competitors must not exceed 20% combined, and non-competitors 30% each, of the market share on the affected relevant technology and product market [Reg. Art 3(1), 3(2)].</p> <p>Should market share subsequently increase above these thresholds, any exemption will continue to apply for a period of two calendar years following the year in which the threshold was first exceeded.</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights, generally: The <b>block exemption</b> applies for as long as the licensed property right has not lapsed, expired or been declared invalid [Reg. Art 2].</p> <p>(b) know-how: The <b>block exemption</b> applies as long as the licensed know-how remains secret, except where the know-how becomes publicly known as a result of action by the licensee, in which case the exemption shall apply for the duration of the agreement [Reg. Art 2].</p>
<p><b>4. Regulation of Price</b></p>	<p>Agreements between <u>Competitors</u>: No, price regulation is a <b>Hard core restriction</b>.</p> <p>Agreements between <u>Non-competitors</u>: Price regulation is a <b>Hard core restriction</b>, except for the setting of maximum sale prices or recommended sale prices, provided these do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties [Reg. Art 4(1)(a)].</p>

<p><b>5. Limitation of Production</b></p>	<p><u>Competitors</u>: A limitation on production is a <b>Hard core restriction</b> except in a <b>non-reciprocal</b> agreement or if only imposed on one party in a <b>reciprocal</b> agreement. [Reg. Art 4(1) (b)]. <u>Non-competitors</u>: No such restriction applies</p>
<p><b>6. Tie-in Clauses</b></p>	<p>Yes, within the Market Thresholds of the <b>Block exemption</b> (see above). With combined market share exceeding the market thresholds it is necessary to balance the pro-competitive and anti-competitive effects of tying [Reg. Art 3, Guidelines para 192].</p>
<p><b>7. General Restrictions</b></p>	<p>Generally, market sharing and customer allocation in agreements between competitors are <b>Hard core restrictions</b>. Restriction of territory and <b>passive</b> (not <b>active</b>) <b>sales</b> to customers in agreements between non-competitors are <b>Hard core restrictions</b>.</p> <p>There are exceptions to these <b>Hard core restrictions</b>, which will potentially allow <b>block exemption</b>. These exemptions are:</p> <p>(a) specified customers: <u>Competitors and non-competitors</u>: An obligation in <b>non-reciprocal</b> agreement to produce products for a particular customer in order to create an alternative source of supply for that customer.</p> <p>(b) Customer groups: In a <b>non-reciprocal</b> agreement between <u>competitors</u>: <b>Active/passive sales</b> to an exclusive customer group reserved to the other party may be restricted [Reg. Art 4 (1)(c)(iv)]; <b>active sales</b> by a licensee to an exclusive customer group allocated to another licensee may be restricted, provided the latter was not a competing undertaking of the licensor at the conclusion of its own licence [Reg. Art 4 (1)(c)(v)]. <u>Non-competitors</u>: All <b>active sales</b> may be restricted. <b>Passive sales</b> to an exclusive customer group reserved for the licensor [Reg. Art 4 (2)(b)(i)]; and <b>passive sales</b> to the exclusive customer group allocated to another licensee during the first two years that the other licensee is selling contract products to that customer group may also be restricted [Reg. Art 4 (2)(b)(ii)].</p> <p>(c) Field of use: Between <u>competitors</u>: Obligations on a licensee to produce only within one or more technical fields [Reg. Art 4 (1)(c)(i)]. Between <u>non-competitors</u>: such obligations are not <b>Hard core restrictions</b>.</p> <p>(d) Territory: In a <b>non-reciprocal</b> agreement between <u>competitors</u>: <b>Active/passive sales</b> to an exclusive territory reserved to the other party may be restricted [Reg. Art 4 (1)(c)(iv)]; <b>active sales</b> by a licensee to an exclusive territory allocated to another licensee may be restricted, provided the latter was not a competing undertaking of the licensor at the conclusion of its own licence [Reg. Art 4 (1)(c)(v)]. In an agreement between <u>non-competitors</u>: All <b>active sales</b> may be restricted; <b>passive sales</b> to an exclusive territory reserved for the licensor may be restricted [Reg. Art 4 (2)(b)(i)]; and <b>passive sales</b> to the exclusive territory allocated to another licensee during the first two years that the other licensee is selling contract products to that territory may also be restricted [Reg. Art 4 (2)(b)(ii)].</p>
<p><b>8. Active/Passive Sales Restrictions</b></p>	<p>See Part A 7(d)</p>

9. Restriction on exploitation of Licensee IP	Between <u>competitors</u> : No, restriction of the licensee's ability to exploit its own technology or of the ability of any of the parties to carry out research and development is a <b>Hard core restriction</b> , unless it is indispensable to prevent the disclosure of the licensed know-how to third parties. [Reg. Art 4 (1)(d)]. Between <u>non-competitors</u> : the same restriction as between competitors except the restriction is an <b>Excluded restriction</b> rather than a <b>Hard core restriction</b> and thus subject to individual assessment of competitive effect [Reg. Art 5(2)].
10. Improvements	<p>(a) an assignment of severable improvements: <b>Excluded</b> from the <b>block exemption</b> (including obligations on a licensee to assign severable improvements a third party designated by the licensor) [Reg. Art 5(1)(b)]</p> <p>(b) an exclusive licence of severable improvements: <b>Excluded</b> from the <b>block exemption</b> [Reg. Art 5(1)(a)].</p> <p>(c) a non-exclusive licence of severable improvements: May be <b>block exempt</b> [Guidelines para 109].</p> <p>(d) an assignment or exclusive licence of non-severable improvements: May be <b>block exempt</b> [Guidelines para 109]</p>
11. Challenge to IPR	Yes, though obligations not to challenge the validity of an IP right are <b>Excluded</b> from the <b>block exemption</b> [Reg. Art 5(1)(c)].
12. Severability	<b>Hard core restrictions</b> result in the whole agreement being void and may not be severed. <b>Excluded restrictions</b> may be severed.
<b><u>Part B - Distribution Agreements</u></b>	
1. Legislation/Rules	<p><u>Commission Regulation (EC) 2790/1999</u>: <b>block exemption</b> to the general anti-competition provisions contained within the <u>Treaty of Rome</u> (see above).</p> <p>Seller's market share must not exceed 30%. Agreements containing exclusive supply obligations, the buyer's market share must also not exceed 30% [Reg. Art 3(1),(2)].</p> <p>The restrictions operate in the same manner as those to <u>Regulation 772/2004</u> (see above). There is a list of <b>Hard core restrictions</b> [Reg. Art 4] and a list of <b>Excluded</b> obligations [Reg Art 5].</p>
2. Regulation of Price	<p>Generally, the <b>block exemption</b> does not apply to vertical agreements which have as their object the restriction of the reseller's ability to determine its sale price.</p> <p>(a) recommended sales prices: A supplier may recommend a sales price, provided this does not amount to a fixed or minimum sale price [Reg. Art</p>

	<p>4(a)].</p> <p>(b) minimum sales prices: The setting of minimum sales prices is a <b>Hard core restriction</b>.</p> <p>(c) maximum sales prices: A supplier may set a maximum sales price, provided this does not amount to a fixed price [Reg. Art 4(a)].</p>
<b>3. Restrictions</b>	<p>(a) territories: This is a <b>Hard core restriction</b> with the exception of a restriction of <b>active sales</b> into the exclusive territory reserved to the supplier or allocated by the supplier to another reseller, where such a restriction does not limit sales by the customers of the reseller [Reg. Art 4(b)]</p> <p>(b) customers: This is a <b>Hard core restriction</b> [Reg. Art 4(b)]</p> <p>(c) customer groups: This is a <b>Hard core restriction</b> with the exception of the restriction of <b>active sales</b> to an exclusive customer group reserved to the supplier or allocated by the supplier to another reseller, where such a restriction does not limit sales by the customers of the buyer [Reg. Art 4(b)].</p>
<b>4. Active/Passive Sales Restrictions</b>	<p>See (Part B, 3 Restrictions) above.</p> <p><b>Hard core restriction</b> with the exception of restriction of <b>active</b> or <b>passive sales</b> to end users by members of a <b>selective distribution system</b> operating at the retail level of trade.</p>
<b>5. Non-compete provisions</b>	<p><u>During term of agreement:</u> <b>Non-compete</b> obligations exceeding 5 years in duration are <b>Excluded</b> from the <b>block exemption</b> unless the reseller is selling goods or services from property or land owned or leased by the supplier where the term may not exceed the term of occupancy be the reseller [Reg. Art 5(a)].</p> <p><u>After term of agreement:</u> <b>Non-compete</b> obligations are <b>Excluded</b> unless they relate to goods or services which compete with the contract goods and services and are limited to the premises and land from which the reseller has operated during the contract period and is indispensable to protect know-how transferred by the supplier to the buyer. In this case, the <b>non-compete</b> obligation should not exceed one year beyond the date of termination of the agreement [Reg. Art 5(b)].</p>
<b>6. Restrictions on competing products</b>	<p>Such obligations of indefinite duration or of greater than 5 years are <b>Excluded</b> from the <b>block exemption</b> [Reg. Art 5(a)] Regulation Guidelines OJ2000 C291/01 para 58]. (Less than 5 years may be <b>block exempt</b>)</p> <p>If applied to <u>competing brands in general</u> within a <b>selective distribution system</b> such restrictions may still be <b>Block exempt</b> [Reg. Art 5(c)].</p> <p>However these restrictions are <b>Excluded</b> if only applied to <u>specific competing suppliers</u> [Guidelines para 61].</p>
<b>7. Severability</b>	<p><b>Hard core restrictions</b> result in the whole agreement being void and may not be severed. <b>Excluded restrictions</b> may be severed.</p>

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## Intellectual Property and Competition Law

### Finland

Prepared by Lex Mundi member firm Roschier, Attorneys Ltd.

<b>Part A - Technology Licenses</b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union*</i>  <u>Finnish Act on Competition Restrictions (the "Act")</u> - mirrors provisions of Article 81 and 82 of the Treaty of Rome.  Note: the Finnish Competition Authority ("FCA") and the Finnish Courts either directly apply the EC rules or the Act is interpreted in light of EC case law on Articles 81 and 82 EC together with regulations and guidelines.
<b>2. Market Shares</b>	See <i>European Union*</i>
<b>3. Duration</b>	(a) & (b) See <i>European Union*</i>
<b>4. Regulation of Price</b>	See <i>European Union*</i>
<b>5. Limitation of Production</b>	See <i>European Union*</i>
<b>6. Tie-in Clauses</b>	See <i>European Union*</i>
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union*</i>
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union*</i>
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>11. Challenge to IPR</b>	See <i>European Union*</i>
<b>12. Severability</b>	Clauses infringing substantial prohibitions of Articles 4 and 6 of the Act (domestic equivalent provisions of Articles 81 and 82 EC) are void (Article 18)

	<p>of the Act). Case-by-case analysis is necessary to determine whether the whole agreement would be void; this is dependent on how the principles of contract law are applied in a particular case. See <i>European Union*</i></p> <p>The EU Block Exemption (772/2004) (See <i>European Union*</i>) guidelines indicate that <b>Excluded restrictions</b> (see <i>European Union*</i>) may be severable - this is likely to be considered the case under the domestic Act. Inclusion of <b>Hard core restricted</b> provisions (see <i>European Union*</i>) will greatly increase the likelihood that the whole agreement will be void under Finnish law, as it does under EC law.</p>
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	<p><u>See European Union*</u></p> <p><u>Finnish Act on Competition Restrictions (the "Act")</u></p> <p>Note: the Finnish Competition Authority and the Finnish Courts either directly apply the EC rules or the Act is interpreted in light of EC case law on Articles 81 and 82 EC together with regulations and guidelines.</p>
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>European Union*</i>
<b>3. Restrictions</b>	(a) (b) & (c) See <i>European Union*</i>
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union*</i>
<b>5. Non-compete provisions</b>	See <i>European Union*</i>
<b>6. Restrictions on competing products</b>	See <i>European Union*</i>
<b>7. Severability</b>	See above (Part A - 12). Note also: The Vertical <b>Block exemption</b> Regulation (2790/1999) guidelines indicate that <b>Excluded restrictions</b> (see <i>European Union*</i> ) may be severable - this is likely to be considered the case under the domestic Act. Inclusion of <b>Hard core</b> Restricted provisions (see <i>European Union*</i> ) will greatly increase the likelihood that the whole agreement will be void under Finnish law, as it does under EC law.

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## Intellectual Property and Competition Law

### Greece

Prepared by Lex Mundi member firm Zepos & Yannopoulos

<b>Part A - Technology Licenses</b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union*</i>  <u>Competition Act 703/77 on the Control of Monopolies and Oligopolies and Protection of Free Competition</u> - implementing Articles 81 and 82 EC.  <u>Law 146/1914 on Unfair Competition</u>
<b>2. Market Shares</b>	See <i>European Union*</i>
<b>3. Duration</b>	(a) intellectual property rights, generally: No specific provisions in Greek law; understood that licences of IPR are valid until the expiry, lapse or declared invalidity of the rights and pursuant to the contractual agreement between the parties. See <i>European Union*</i>  (b) know-how: No specific national legislation in Greek law for the maximum duration of know-how licences. Note: It is understood that protection against infringement of trade secrets only possible to the extent that the trade secret remains secret (Law 146/1914, Articles 16-18). See <i>European Union*</i>
<b>4. Regulation of Price</b>	See <i>European Union*</i>
<b>5. Limitation of Production</b>	See <i>European Union*</i>
<b>6. Tie-in Clauses</b>	See <i>European Union*</i>
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union*</i>
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union*</i>
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union*</i>

11. <b>Challenge to IPR</b>	See <i>European Union</i> *
12. <b>Severability</b>	See <i>European Union</i> *
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See <i>European Union</i> *
2. <b>Regulation of Price</b>	(a) (b) & (c) See <i>European Union</i> *
3. <b>Restrictions</b>	(a) (b) & (c) See <i>European Union</i> *
4. <b>Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
5. <b>Non-compete provisions</b>	See <i>European Union</i> *
6. <b>Restrictions on competing products</b>	See <i>European Union</i> *
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Guatemala

Prepared by Lex Mundi member firm Mayora & Mayora, S.C.

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	No specific legislation relating to the licensing, transfer or other exploitation of IP rights.  Agreements will follow general principles of commercial contracts according with the <u>Civil Code</u> and <u>Commercial Code</u> .
<b>2. Market Shares</b>	N/A
<b>3. Duration</b>	(a) intellectual property rights, generally: No specific rule. Parties are free to negotiate licence duration.  (b) know-how: duration subject only to agreement between the parties.
<b>4. Regulation of Price</b>	Yes, matter for agreement between the parties.
<b>5. Limitation of Production</b>	A licensor may limit output by a licensee by express agreement. Annual production may also be limited by mutual agreement.
<b>6. Tie-in Clauses</b>	Yes
<b>7. General Restrictions</b>	(a) specified customers: Such restrictions may be provided for in a licence agreement.  (b) customer groups: Such restrictions may be provided for in a licence agreement.  (c) field of use: Such restrictions may be provided for in a licence agreement.  (d) territory: Such restrictions may be provided for in a licence agreement.
<b>8. Active/Passive Sales Restrictions</b>	Yes.
<b>9. Restriction on exploitation of</b>	Yes.

<b>Licensee IP</b>	
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: Possible by mutual agreement between the parties.</p> <p>(b) an exclusive licence of severable improvements: Possible by mutual agreement between the parties.</p> <p>(c) a non-exclusive licence of severable improvements: Possible by mutual agreement between the parties.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Possible by mutual agreement between the parties.</p>
<b>11. Challenge to IPR</b>	The agreement may be terminated in accordance with any agreed conditions. No general right for a Licensee to challenge the licensor's right to the IP.
<b>12. Severability</b>	Anti-competitive provisions are handled under private law and may be severed provided there was such agreement between the parties. An agreement may be void provided a party can argue a material impossibility to comply with the agreed conditions.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	No specific legislation referred to.
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: yes.</p> <p>(b) minimum sales prices: minimum sales prices in a distribution agreement may be mutually agreed.</p> <p>(c) maximum sales prices: maximum sales prices in a distribution agreement may be mutually agreed.</p>
<b>3. Restrictions</b>	<p>(a) territories: Yes, a reseller may be restricted.</p> <p>(b) customers: Yes, a reseller may be restricted.</p> <p>(c) customer groups: Yes, a reseller may be restricted.</p>
<b>4. Active/Passive Sales</b>	Yes, a reseller may be restricted.

<b>Restrictions</b>	
<b>5. Non-compete provisions</b>	Yes. <b>Non-compete</b> provisions may be agreed for both the duration and after the term of the agreement.
<b>6. Restrictions on competing products</b>	Yes. Resellers may be restricted from selling competing products both generally and in respect of specific competing products.
<b>7. Severability</b>	See above, Part A - 12.

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## Intellectual Property and Competition Law

### Hungary

Prepared by Lex Mundi member firm Nagy és Trócsányi

<b><u>Part A - Technology Licenses</u></b>	The law in this area has been harmonized within the EU. Please note that the regulation of competition law is parallel with the national law.
<b>1. Legislation/Rules</b>	<ul style="list-style-type: none"> <li>- Commission Regulation (EC) 772/2004</li> <li>- Hungarian Competition Act (Act LVII of 1996)</li> <li>- Government Order 86 of 1999</li> </ul> <p>Hungarian legislation must be interpreted and applied in accordance with the EU regulation and case-law of the ECJ</p>
<b>2. Market Shares</b>	Licensee must not exceed 30% of the market share on the affected relevant technology and product market
<b>3. Duration</b>	<ul style="list-style-type: none"> <li>- Intellectual property rights: the block exemption applies for as long as the licensed property right has not lapsed</li> <li>- Know-how: as long as the licensed know-how remains secret</li> </ul>
<b>4. Regulation of Price</b>	Price regulation is a hard core regulation
<b>5. Limitation of Production</b>	Text of the Hungarian regulation is the same as the EU regulation
<b>6. Tie-in Clauses</b>	Text of the Hungarian regulation is the same as the EU regulation
<b>7. General Restrictions</b>	Market sharing and customer allocation in agreements
<b>8. Active/Passive Sales Restrictions</b>	Text of the Hungarian regulation is the same as the EU regulation
<b>9. Restriction on exploitation of Licensee IP</b>	Text of the Hungarian regulation is the same as the EU regulation
<b>10. Improvements</b>	Text of the Hungarian regulation is the same as the EU regulation
<b>11. Challenge to IPR</b>	Text of the Hungarian regulation is the same as the EU regulation

12. <b>Severability</b>	Text of the Hungarian regulation is the same as the EU regulation
<b>Part B - Distribution Agreements</b>	The law in this area has been harmonized within the EU. Please note that the regulation of competition law is parallel with the national law.
1. <b>Legislation/Rules</b>	- Commission Regulation (EC) 2790/1999  - Government Order 55/2002  Hungarian legislation must be interpreted and applied in accordance with the EU regulation and an case-law of the ECJ
2. <b>Regulation of Price</b>	Text of the Hungarian regulation is the same as the EU regulation
3. <b>Restrictions</b>	Text of the Hungarian regulation is the same as the EU regulation
4. <b>Active/Passive Sales Restrictions</b>	Text of the Hungarian regulation is the same as the EU regulation
5. <b>Non-compete provisions</b>	Text of the Hungarian regulation is the same as the EU regulation
6. <b>Restrictions on competing products</b>	Text of the Hungarian regulation is the same as the EU regulation
7. <b>Severability</b>	Text of the Hungarian regulation is the same as the EU regulation

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## Intellectual Property and Competition Law

### Iceland

Prepared by Lex Mundi member firm LOGOS Legal Services

<p><b><u>Part A - Technology Licenses</u></b></p>	<p><i>*Much of the law in this area has been harmonised within the EU and the provisions adopted by the EEA Joint Committee. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction. <b>Note: references to Article 81 EC correspond to Article 53 of the EEA Agreement</b></i></p>
<p><b>1. Legislation/Rules</b></p>	<p><u>Lög um einkaleyfi (Patent Act) no. 17/1991</u></p> <p><u>Höfundalög (Copyright Act) No. 73/1972</u></p> <p><u>Samkeppnislög (Competition Act) No. 8/1993</u> [due to be replaced by new Act applying same principles as Art 81 and 82 of the EC treaty as set out in Commission Regulation (EC) 1/2003]</p> <p><u>EEA Agreement.</u></p> <p><u>Also see <i>European Union</i>*</u> Note: <b>Block exemption</b> (772/2004) Regulation adopted by EEA Joint Committee</p>
<p><b>2. Market Shares</b></p>	<p>See <i>European Union</i>*</p>
<p><b>3. Duration</b></p>	<p>(a) &amp; (b) See <i>European Union</i>*</p>
<p><b>4. Regulation of Price</b></p>	<p>See <i>European Union</i>*</p>
<p><b>5. Limitation of Production</b></p>	<p>See <i>European Union</i>*</p>
<p><b>6. Tie-in Clauses</b></p>	<p>Generally, no. <u>Competition Act</u> Article 10(e) prohibits making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.</p> <p>See <i>European Union</i>*</p>
<p><b>7. General Restrictions</b></p>	<p>(a), (b), (c) &amp; (d) - See <i>European Union</i>*</p>
<p><b>8. Active/Passive Sales Restrictions</b></p>	<p>See <i>European Union</i>*</p>

9. Restriction on exploitation of Licensee IP	See <i>European Union</i> *
10. Improvements	(a), (b), (c) & (d) - See <i>European Union</i> *
11. Challenge to IPR	See <i>European Union</i> *
12. Severability	See <i>European Union</i> *.  Article 36 of Act 7/1936 on contractual obligations provides that agreements may be partially suspended if the agreement itself can stand without the disputed provision.
<b><u>Part B - Distribution Agreements</u></b>	
1. Legislation/Rules	<u>Samkeppnislög (Competition Act) No. 8/1993</u> (see above, part A – 1)
2. Regulation of Price	(a) (b) & (c) Article 11(a) of the Competition Act prohibits the imposition of unfair prices and/or business practices. Insofar as the prices imposed can be defined as such, they could be found to be in breach of that article. The restriction is only applicable to agreements between companies, which together have a market share of 5-10% or more, depending on whether the cooperation is vertical or horizontal (cf. Art. 13 of the Competition Act).
3. Restrictions	(a) (b) & (c) By virtue of Article 10 of the Competition Act, such agreements are in principle prohibited between companies, which together have a market share of 5-10% or more, depending on whether the cooperation is vertical or horizontal (cf. Art. 13 of the Competition Act). Such an agreement could, however, be permitted under the terms described under <i>European Union</i> *.
4. Active/Passive Sales Restrictions	Permissible between companies, which together have a market share of less than 10% or 5%, depending on whether the cooperation is vertical or horizontal respectively (cf. Art. 13 of the Competition Act). May be permissible in other cases subject to assessment of affect on competition.
5. Non-compete provisions	Such provisions are in principle prohibited by virtue of Article 12 of the Competition Act. The Competition Council may lift that prohibition if that were to benefit consumers and/or the market itself (cf. Article 16 of the Competition Act).
6. Restrictions on competing products	<b>Selective distribution</b> networks may be set up on condition that they are of benefit to consumers and the market, in accordance with Article 16 of the Competition Act. Agreements on <b>selective distribution</b> networks often include provisions restricting resellers to selling only one specific brand or

	product.
7. Severability	See above, Part A - 12

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## Intellectual Property and Competition Law

### India

Prepared by Lex Mundi member firm Amarchand & Mangaldas & Suresh A. Shroff & Co.

<b><u>Part A - Technology Licenses</u></b>	
<p>1. <b>Legislation/Rules</b></p>	<p><u>Monopolies and Restrictive Trade Practices Act 1969 ("MRTP Act")</u></p> <p><u>Competition Act 2002</u> (substantive provisions not yet notified, MRTP Act continues to be in force).</p> <p>Note: Many provisions of the MRTP Act have not been tested by the courts in India.</p> <p>Section 33 of the MRTP Act deals with trade practices deemed restrictive. Agreements falling within the scope of Section 33 are required to be registered in accordance with the provisions of the Act. Trade practices falling under Section 33 are <i>per se</i> restricted and need not be tested. Other trade practices may however be examined for restrictiveness.</p> <p>See also Copyright Act 1957; Patents Act 1970; Trade Marks Act 1990; Designs Act 2000; Geographical Indications of Goods (Registration and Protection) Act 1999; The Biological Diversity Act 2002.</p>
<p>2. <b>Market Shares</b></p>	<p>No.</p>
<p>3. <b>Duration</b></p>	<p>(a) intellectual property rights, generally: Generally the term of a licence cannot exceed the life of the intellectual property protection granted by statute. Beyond that no maximum duration specified for a licence; parties free to negotiate term of the licence.</p> <p>(b) know-how: No specific statute governing know-how licences. Know-how may be protected under contractual provisions provided it can be established that know-how is confidential. A know-how licence can remain in force as long as the information remains confidential. Disclosure will normally terminate the licence unless such disclosure is caused by unauthorized acts on the part of the licensee.</p>
<p>4. <b>Regulation of Price</b></p>	<p>Resale price maintenance (in this instance a trade practice where the licensor directs / requires a licensee to control or restrict the prices at which he sells products incorporating licensed intellectual property) is a restricted trade practice under the MRTP Act; Agreements which purport to establish minimum prices to be charged on the resale of goods in India shall be void. However, these provisions do not apply to patent licences or any price</p>

	<p>regulation contained therein.</p> <p>Agreements that seek to regulate the price of goods on resale are <b>per se</b> restrictive practices.</p> <p>Note: These restrictions do not apply to price recommendation; specifically agreements that allow a lower price to be set by a licensee than that set by the licensor.</p>
<b>5. Limitation of Production</b>	<p>Any agreement to limit, restrict or withhold output of supply of goods is deemed <b>per se</b> restrictive practice (MRTP Act Section 33(1)).</p> <p>Note: section 15B of the MRTP Act provides an exception for patent rights licences from application of the MRTP provisions.</p>
<b>6. Tie-in Clauses</b>	<p>Tie-in agreements are prohibited as a restrictive trade practice (MRTP Act Section 33B).</p> <p>The Patents Act similarly prohibits tie-in arrangements with respect to patent licences (Patents Act Section 140(13)).</p>
<b>7. General Restrictions</b>	<p>(a) specified customers: restriction to certain customers or customer groups in a trademarks, copyright or design licence agreement are prohibited as a “refusal to deal” under the MRTP Act and would be an agreement in restraint of trade. Restriction to certain specified customers or customer groups would mean that other consumers or consumer groups would be refused the right to purchase the licensed article. In contrast, patent licenses may be so restricted.</p> <p>(b) customer groups: see (a) above.</p> <p>(c) field of use: an agreement to allocate any area or market for the disposal of goods is prohibited as a restrictive trade practice (patent licences are accepted and may include such restrictions.)</p> <p>(d) territory: see (c) above.</p> <p>Note: The MRTP Act requires registration of agreements, restricting in any manner the class or number of wholesalers, producers or suppliers from whom any goods may be bought.</p>
<b>8. Active/Passive Sales Restrictions</b>	<p>No. Allocation of areas or markets for the disposal of goods is prohibited as a <b>per se</b> restricted trade practice. (Patent licences may be accepted from such a prohibition.)</p>
<b>9. Restriction on exploitation of Licensee IP</b>	<p>Such a restriction could be said to limit the technical development by the licensee and therefore is classified as a monopolistic trade practice and hence prohibited.</p> <p>The Patent Act Section 141 similarly prohibits restriction of the licensee’s ability to exploit its own IP. This is likely to extend to the licensee’s ability to carry out R&amp;D though not explicitly stated.</p>

<p><b>10. Improvements</b></p>	<p>The MRTP Act does not regulate provisions relating to grant backs.</p> <p>The Patents Act prohibits licence agreements that provide for exclusive grant backs. Assignments are not specifically provided for in the legislation however it is likely that the courts will find these even more restrictive than exclusive grant back licences and therefore hold such provisions to be invalid.</p> <p>The statute only prohibits exclusive grant backs and therefore it is implied that non-exclusive grant back licences are permitted.</p> <p>Note: No distinction is made between severable and non-severable improvements; there is no case law on this point and therefore it is difficult to predict whether this distinction will be recognised.</p> <p>Thus for patent licence agreements:</p> <ul style="list-style-type: none"> <li>(a) an assignment of severable improvements: likely to be prohibited</li> <li>(b) an exclusive licence of severable improvements: prohibited</li> <li>(c) a non-exclusive licence of severable improvements: likely to be permitted</li> <li>(d) an assignment or exclusive licence of non-severable improvements: unknown whether such an obligation would be permissible.</li> </ul>
<p><b>11. Challenge to IPR</b></p>	<p>Yes, generally no such restriction exists within IP Legislation. Note: the Patents Act provides that conditions of a licence that prevent challenges to validity of a patent shall be void.</p>
<p><b>12. Severability</b></p>	<p>Under the MRTP Act an agreement relating to a restrictive trade practice which is prejudicial to the public interest may either be void or modified in such manner as is specified within the order.</p> <p>The Patents Act renders void only restrictive conditions within an agreement and not the entire agreement.</p>
<p><b><u>Part B - Distribution Agreements</u></b></p>	
<p><b>1. Legislation/Rules</b></p>	<p><u>Monopolies and Restrictive Trade Practices Act 1969 ("MRTP Act")</u></p>
<p><b>2. Regulation of Price</b></p>	<p>(a) recommended sales prices: There requires to be a clear mention in the price list that dealers can sell at prices lower than those shown therein otherwise the recommended price may fall fowl of the re-sale price maintenance provision which prohibits any agreement to sell goods, on condition that the price is to be charged on re-sale by the purchaser shall be the price as stipulated by the seller unless it is clearly stated that prices</p>

	<p>lower than those prices may be charged (Section 33.1 MRTP Act).</p> <p>(b) minimum sales prices: Establishment of minimum sales prices is a form of restrictive trade practice and such provisions will be void. <b>Note:</b> such price maintenance is now <i>per se</i> prohibited and punishable under Section 51 of the MRTP which may result in imprisonment. Arrangements which seek to establish minimum resale price maintenance are void and illegal <i>per se</i>.</p> <p>(c) maximum sales prices: Where a list mentions maximum retail prices of products resellers would have the liberty to sell products below prices in the price list and hence this would not be prohibited as re-sale price maintenance under Section 33.1 (f).</p> <p>Note:</p> <ol style="list-style-type: none"> <li>1. A condition inserted by the seller stipulating the re-sale price would make the agreement liable for registration;</li> <li>2. If an agreement clearly states that a reseller can sell at prices lower than those stipulated then it would avoid falling under Section 33.1 (f);</li> <li>3. Stipulation of maximum resale price does not attract Section 33.1 (f) as the reseller is free to sell at the price below such a maximum; and</li> <li>4. A stipulation as regards minimum resale price is <i>per se</i> illegal.</li> </ol>
<b>3. Restrictions</b>	<p>(a) territories: An agreement which is to limit, restrict or withhold output or supply of any goods or allocate any area of market for disposal of goods shall be deemed to be a restrictive trade practice (Section 33.1 (g) MRTP Act). Therefore restriction of reseller territory may be deemed to be a restrictive trade practice and prohibited.</p> <p>(b) customers: Section 33.1 (ja) of the MRTP Act prohibits any agreement restricting the class or number of wholesalers, producers or suppliers from whom any goods may be bought. Restriction of a reseller to certain customers or customer groups may be such a restriction.</p> <p>(c) customer groups: see (b) above.</p>
<b>4. Active/Passive Sales Restrictions</b>	No distinction is made between <b>active</b> and <b>passive sales</b> in regard to territorial restrictions; therefore the reseller cannot be restricted from making <b>active</b> or <b>passive sales</b> . See Part B - 3 (a) above.
<b>5. Non-compete provisions</b>	Restrictions in an agreement pertaining to exclusivity which are operational during the period of the agreement are valid. Any post-termination restriction of a <b>non-compete</b> nature will be prohibited by Section 27 of the Contract Act, which prohibits a restraint from exercising a lawful provision or trade or business of any kind. Such contracts are unenforceable, void and against the public policy.
<b>6. Restrictions on competing</b>	No. Such restrictions would be restrictive trade practices under Section 33.1

<b>products</b>	(c) of the MRTP Act, which provides “any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of any other person” shall be a restrictive trade practice.
<b>7. Severability</b>	See above, Part A - 12.

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## Intellectual Property and Competition Law

### Indonesia

Prepared by Lex Mundi member firm Ali Budiardjo, Nugroho, Reksodiputro

<b><u>Part A - Technology Licenses</u></b>	
1. <b>Legislation/Rules</b>	<p><u>Law No 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition ('Antimonopoly Law')</u></p> <p><u>Patent Law No 14 of 2001</u></p> <p><u>Mark Law No 15 of 2001</u></p>
2. <b>Market Shares</b>	No.
3. <b>Duration</b>	<p>(a) intellectual property rights, generally: Not longer than the protection period of the right concerned.</p> <p>(b) know-how: To be agreed between the parties.</p>
4. <b>Regulation of Price</b>	It is currently unclear how the Antimonopoly Law would treat such an arrangement. The Antimonopoly Law exempts IPR agreements. However, the Indonesian Competition Body (Komisi Pengawas Persaingan Usaha 'KPPU') has advised that the exemptions under article 50 of the Antimonopoly Law should not be regarded as absolute. To date no specific guidelines have been issued on this matter.
5. <b>Limitation of Production</b>	See above - 4
6. <b>Tie-in Clauses</b>	See above - 4
7. <b>General Restrictions</b>	<p>(a) specified customers: See above - 4</p> <p>(b) customer groups: See above - 4</p> <p>(c) field of use: See above - 4</p> <p>(d) territory: See above - 4</p>
8. <b>Active/Passive Sales Restrictions</b>	See above - 4
9. <b>Restriction on exploitation of</b>	See above - 4

<b>Licensee IP</b>	
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: See above - 4</p> <p>(b) an exclusive licence of severable improvements: See above - 4</p> <p>(c) a non-exclusive licence of severable improvements: See above - 4</p> <p>(d) an assignment or exclusive licence of non-severable improvements: See above - 4</p>
<b>11. Challenge to IPR</b>	See above - 4
<b>12. Severability</b>	See above - 4
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	See above - 1
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: See above part A - 4</p> <p>(b) minimum sales prices: See above part A - 4</p> <p>(c) maximum sales prices: See above part A - 4</p>
<b>3. Restrictions</b>	<p>(a) territories: See above part A - 4</p> <p>(b) customers: See above part A - 4</p> <p>(c) customer groups: See above part A - 4</p>
<b>4. Active/Passive Sales Restrictions</b>	See above part A - 4
<b>5. Non-compete provisions</b>	See above part A - 4
<b>6. Restrictions on competing products</b>	See above part A - 4
<b>7. Severability</b>	See above part A - 4

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## Intellectual Property and Competition Law

### Ireland

Prepared by Lex Mundi member firm Arthur Cox

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	<p>See <i>European Union</i>*</p> <p><u>Competition Act 2002</u></p> <p>The Competition Authority has the power to confirm in writing that in its opinion a specified category of agreements, decisions or considered practices complies with the efficiency conditions set out in Section 4.5 of the Competition Act (equivalent to Article 83.2 of the EC Treaty) (Category Declarations).</p> <p>Category Declaration in respect of vertical agreements will cover the assignment or use of IP rights to/by a buyer where they do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers.</p>
<b>2. Market Shares</b>	See <i>European Union</i> *
<b>3. Duration</b>	<p>(a) &amp; (b) See <i>European Union</i>*</p> <p>No Irish specific competition legislation on this matter.</p>
<b>4. Regulation of Price</b>	See <i>European Union</i> *
<b>5. Limitation of Production</b>	<p>See <i>European Union</i>*</p> <p>No Irish specific competition legislation on this matter.</p>
<b>6. Tie-in Clauses</b>	<p>See <i>European Union</i>*</p> <p>No Irish specific competition legislation on this matter.</p>
<b>7. General Restrictions</b>	<p>(a), (b), (c) &amp; (d) - See <i>European Union</i>*</p> <p>No Irish specific competition legislation on this matter.</p>

<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union</i> * No Irish specific competition legislation on this matter.
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union</i> * No Irish specific competition legislation on this matter.
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union</i> * No Irish specific competition legislation on this matter.
<b>11. Challenge to IPR</b>	See <i>European Union</i> * No Irish specific competition legislation on this matter.
<b>12. Severability</b>	See <i>European Union</i> * Competition Act Section 4.6 permits a Court in exercising jurisdiction conferred on it by the Act to apply, where appropriate, rules of law as to severance of those terms of that agreement, decision or considered practice which contravenes Section 4 from those which do not contravene.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union</i> * <u>Competition Act 2002</u> <u>Category declaration in respect of vertical agreements and concerted practices (D/03/001)</u> (“Category Declaration”)
<b>2. Regulation of Price</b>	(a) (b) & (c)    See <i>European Union</i> *  (a) recommended sales price: recommended sales prices are permissible, provided the recommendation does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties  (b) minimum sales price: no, a buyer’s ability to determine its resale price cannot be restricted by a supplier.  (c) maximum sales price: yes, may be imposed provided this does not amount to a fixed sale price as a result of pressure from or incentives offered by any of the parties.

3. <b>Restrictions</b>	(a) (b) & (c) See <i>European Union</i> * Category Declaration mirrors European <b>block exemption</b> .
4. <b>Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
5. <b>Non-compete provisions</b>	See <i>European Union</i> * Category Declaration mirrors European <b>block exemption</b> .
6. <b>Restrictions on competing products</b>	See <i>European Union</i> * Category Declaration mirrors terms of European <b>block exemption</b> .
7. <b>Severability</b>	See above, Part A – 12

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## Intellectual Property and Competition Law

### Italy

Prepared by Lex Mundi member firm Chiomenti Studio Legale

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	<p><u>Industrial Property Code</u></p> <p><u>Italian Copyright Code</u></p> <p>With respect to patent inventions, a compulsory, non-exclusive license may be granted to third parties by operation of law if the patentee fails to exploit the invention in Italy or fails to satisfy market needs within three years from the date of the grant of the patent, or four years from the filing date, whichever comes later.</p> <p>See <i>European Union</i>*</p>
2. <b>Market Shares</b>	See <i>European Union</i> *
3. <b>Duration</b>	<p>(a) See <i>European Union</i>*</p> <p>Note: perpetual licences may be unenforceable under Italian law and entitle either party to withdraw from the agreement at any time with reasonable notice.</p> <p>(b) See <i>European Union</i>*</p>
4. <b>Regulation of Price</b>	See <i>European Union</i> *
5. <b>Limitation of Production</b>	See <i>European Union</i> *
6. <b>Tie-in Clauses</b>	See <i>European Union</i> *
7. <b>General Restrictions</b>	(a), (b), (c) & (d) See <i>European Union</i> *
8. <b>Active/Passive Sales Restrictions</b>	<p>See <i>European Union</i>*</p> <p><u>Section 1379 of the Italian Civil Code</u>: A sales restriction in an agreement is effective only if provided for a reasonable period of time and in compliance with the specific needs of one of the parties.</p>

<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union</i> *
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>11. Challenge to IPR</b>	See <i>European Union</i> *
	Permissible - evaluated on a case-by-case basis depending on terms of any agreement between the parties.
<b>12. Severability</b>	If agreement contains a severability clause See <i>European Union</i> *
	Anti-competitive provisions set forth in an agreement can be severed and will not cause the entire agreement to be void if they can be replaced by mandatory rules or it appears that the anti-competitive clauses are not essential for the whole structure and balance of the agreement, which may preserve its main effects for any parties even without the provisions at issue.
	<u>Law 287/90</u> (on "Protection of competition and market"), section 2: Agreements which have as their object or effect appreciable prevention, restriction or distortion of competition within the national market or within a substantial part of it, are null and void. However, this provision has to be read against the provisions on contracts in general, and specifically <u>Article 1419 of the Italian Civil Code</u> , according to which (i) the invalidity of single clauses causes the invalidity of the entire contract, if it appears that the contracting parties would not have entered into it without that part of its content which is affected by invalidity, and (ii) the invalidity of a single clause does not cause the invalidity of the contract when, by virtue of law, mandatory rules replace the void clauses.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union</i> *
	<u>Italian Civil Code</u> : No express regulation of distribution agreements; general contract provisions apply.
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>European Union</i> *
<b>3. Restrictions</b>	(a) (b) & (c) See <i>European Union</i> *
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *

5. <b>Non-compete provisions</b>	See <i>European Union</i> *  Permitted during the term of the distribution agreement, if strictly connected to the purpose of the agreement.
6. <b>Restrictions on competing products</b>	See <i>European Union</i> *  Restrictions against specific competing products should be permitted so long as there is a valid commercial reason and it does not result in a specific act aimed at damaging a particular competitor.  <u>Italian Civil Code, Section 2598</u> : Under specific circumstances the boycott of a specific competitor could be considered an act of unfair competition
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Japan

Prepared by Lex Mundi Nishimura & Asahi

<b>Part A - Technology Licenses</b>	
<b>1. Legislation/Rules</b>	<p><u>Act Concerning Prohibition of Private Monopolisation and Maintenance of Fair Trade (1947, as amended)</u> (the "Antimonopoly Act")</p> <p><u>Fair Trade Commission of Japan (Guidelines for patent and know-how Licensing Agreements under the Anti-Monopoly Act) (1999)</u> (the "Guidelines").</p> <p>Section 21 of the Anti-Monopoly Act excepts acts recognisable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act or the Trade Mark Act, however the Guidelines advise that even acts considered to be the exercise of rights under the aforementioned Acts, if the said acts are considered to deviate from or run counter to a purpose of the Intellectual Property Rights System, it is possible that the Anti-Monopoly Act will also apply since they would no longer be deemed acts recognisable as the exercise of rights under the aforementioned Acts.</p> <p>Note: Though the Guidelines restrict agreements concerning patents and know-how, and explicitly state that they are not directly applicable to the licensing of other forms of IP, they will still be applied <i>mutatis mutandis</i> to other forms of IP taking account of the differences in nature of patents and know-how arising from the exclusivity of the rights.</p>
<b>2. Market Shares</b>	<p>No market share specified.</p> <p>However, the position in a relevant market of a licensor or licensee can be an important factor in determining whether an agreement violates the Anti-Monopoly Act - certain provisions only apply to parties that are influential in the market. (See below)</p>
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: maximum duration for licences of IP is the period until expiry, lapse or declared invalidity of the rights (see the Guidelines - Part 4, 2 (3) A).</p> <p>(b) know-how: As (a) above (the Guidelines - Part 4, 2 (3) B).</p>
<b>4. Regulation of Price</b>	<p>Regulation of price in patent licensing or know-how licensing agreements is likely to be in violation of the Anti-Monopoly Act due to the likely adverse</p>

	effect on competition in a market from price competition reduction.
<b>5. Limitation of Production</b>	<p>Patent or know-how licensing agreements that have minimum output requirements will not in principle fall within the category of unfair trade practices if such agreements are made to secure a minimum royalty income.</p> <p>Maximum output restrictions will be assessed on a case by case basis in light of the purpose and form of the restrictions and the significance of their affect on the competition market. Restrictions that have the effect of adjusting supply and demand in a market will fall within the category of unfair trade practices and be in violation of the Anti-Monopoly Act (the Guidelines Part 4, 4 (2)).</p>
<b>6. Tie-in Clauses</b>	<p>Tie-in clauses designating supply sources to an extent necessary to guarantee the effectiveness of the licensed technology (maintain goodwill in TM etc) or protect the secrecy of licensed know-how do not in principle fall within the category of unfair trade practices.</p> <p>Other such restrictions designating where a licensee may source materials are likely to restrict competition and fall within the category of unfair trade practices, in violation of the Antimonopoly Act.</p>
<b>7. General Restrictions</b>	<p>Exclusive and Non-exclusive Licenses:</p> <p>(a) specified customers: Such agreements may have an adverse effect on competition in a market by restricting the freedom of the licensee to select sales outlets, fall within the category of unfair trade practices and are in violation of the Antimonopoly Act.</p> <p>(b) customer groups: See (a) above - no distinction between customers and customer groups.</p> <p>(c) field of use: Such restrictions on exploitation of a licensed technology do not in principle fall within the category of unfair trade practices; however, if such were to have an effect on sales fields, they would fall within the category of unfair trade practices and would be in violation of the Antimonopoly Act if they have an adverse effect on competition in a market.</p> <p>(d) territory: Such restrictions to a limited area within Japan, do not in principle fall within the category of unfair trade practices.</p>
<b>8. Active/Passive Sales Restrictions</b>	Sales restrictions which impede fair competition prohibited - determined on a case-by-case basis.
<b>9. Restriction on exploitation of Licensee IP</b>	Such restrictions are considered to have adverse effect on competition; usually there is no reasonable justification and thus it is highly likely that such restrictions would violate the Antimonopoly Act.
<b>10. Improvements</b>	(a) an assignment of severable improvements: Highly likely to violate Antimonopoly Act unless appropriate price paid by licensor.

	<p>(b) an exclusive licence of severable improvements: Highly likely to violate Antimonopoly Act unless appropriate price paid by licensor.</p> <p>(c) a non-exclusive licence of severable improvements: Does not in principle fall within unfair trade practices or violate the Antimonopoly Act.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Guidelines do not distinguish between severable and non-severable improvements - see (a) &amp; (b) above.</p>
<b>11. Challenge to IPR</b>	Obligations which prohibit a licensee from challenging the validity of licensed rights will violate the Antimonopoly Act if has an adverse effect on trade. A provision in a licence agreement permitting termination upon such a challenge does not in principle violate the Antimonopoly Act.
<b>12. Severability</b>	There is no provision in Japanese law that would void an entire agreement on the basis of a provision in violation of the Antimonopoly Act - Anti-competitive provisions are capable of being severed.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<p><u>Antimonopoly Act</u> - see above Part A - 1</p> <p><u>Fair Trade Commission of Japan "Guidelines concerning Distribution Systems Business Practices under the Antimonopoly Act" (1191)</u> (the "Distribution Guidelines")</p>
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: recommendation not prohibited to the extent that it is genuinely only a recommendation.</p> <p>(b) minimum sales prices: restrictions on sales prices are in principle illegal (with the exception of very limited circumstances where proper justification is founded).</p> <p>(c) maximum sales prices: restrictions on sales prices are in principle illegal (with the exception of very limited circumstances where proper justification is founded).</p>
<b>3. Restrictions</b>	<p>(a) Territories: The Guidelines specify that two types of territorial restrictions are not illegal: (1) assigning a territory to a distributor as the area of primary responsibilities and requiring <b>active sales</b> to be carried out there; and (2) restricting the area where a distributor may establish business premises.</p> <p>Note: Where product price levels will be fixed as a result, the following provisions shall be prohibited: (i) territorial restrictions imposed by a manufacturer/licensor with more than 10% share, or positioned within the top three, in the market; and (ii) restrictions imposed by a manufacturer/licensor</p>

	<p>on <b>passive sales</b>.</p> <p>(b) Customers: Illegal if price level likely to be fixed as a result of the restriction.</p> <p>(c) Customer groups: Illegal if price level likely to be fixed as a result of the restriction.</p>
<b>4. Active/Passive Sales Restrictions</b>	Restrictions on <b>active sales</b> on sole distributors in a territory or on other distributors into the territory of a sole distributor do not in principle violate the Antimonopoly Act.
<b>5. Non-compete provisions</b>	It is possible to include non-compete provisions during and after the term of the agreement; however, if such restrictions may have an adverse effect on competition in a market by restricting the freedom of one party, it will fall within the category of unfair trade practices and be in violation of the Antimonopoly Act. In particular, restrictions after the term of the agreement are more likely to be in violation of the Antimonopoly Act.
<b>6. Restrictions on competing products</b>	It may be possible to restrict a distributor from selling competing products, both generally and with respect to specific products. However, if an influential manufacturer (see 3(a) above) imposes such restrictions and such conduct reduces business opportunities, making it difficult for competitors to find alternative trading partners then such conduct is illegal as unfair trading practices.
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Latvia

Prepared by Lex Mundi member firm LAWIN

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	<p>See <i>European Union*</i></p> <p>No specific competition Latvian legislation regulating the licensing of IP.</p> <p><u>Latvian Competition Law</u> - general Latvian competition law. "Agreements between market participants, which agreements have as their purpose or consequence the hindrance, restriction or distortion of competition in the territory of Latvia, are prohibited and null and void from the moment of being entered into" (Section 11(1)).</p> <p>Latvian law does not contain any specific domestic competition regulation on the licensing, transfer or other exploitation of intellectual property rights. Latvian intellectual property laws grant exclusive rights to the holder, including the right to licence his rights under his terms and conditions.</p>
<b>2. Market Shares</b>	See <i>European Union*</i>
<b>3. Duration</b>	<p>See <i>European Union*</i></p> <p>(a) intellectual property rights, generally: no duration specified in Latvian legislation; however clear that the duration of a licence cannot exceed the duration of the licensed right.</p> <p>(b) know-how: no specific Latvian regulation of know-how licence term. Commercial secrets protected by Commercial Law, however no restriction in either legislation or case-law restricting licensing of commercial secrets or know-how.</p>
<b>4. Regulation of Price</b>	<p>See <i>European Union*</i></p> <p>Latvian Competition Law prohibits certain agreements that restrict or distort competition in the territory of Latvia including agreements on fixing of prices.</p>
<b>5. Limitation of Production</b>	See above (1) and <i>European Union*</i>
<b>6. Tie-in Clauses</b>	See above (1) and <i>European Union*</i>

7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See above (4) and <i>European Union*</i>
8. <b>Active/Passive Sales Restrictions</b>	See above (1) and <i>European Union*</i>
9. <b>Restriction on exploitation of Licensee IP</b>	See <i>European Union*</i>  See above (1). Latvian IP laws do not restrict licensees from agreeing not to exercise their rights in their own IP with a licensor.
10. <b>Improvements</b>	(a), (b), (c) & (d) - See above (1) and <i>European Union*</i>
11. <b>Challenge to IPR</b>	Latvian law does not prohibit a licensor from terminating an agreement due to a licensee challenge to the licensor's IP.  See <i>European Union*</i>
12. <b>Severability</b>	See <i>European Union*</i> .  Latvian Civil Law distinguishes between essential, natural and incidental elements to a lawful transaction. The essential elements of a transaction are everything necessary to its concept and without which the intended transaction itself is impossible. The natural elements of a transaction are those which are its direct consequences by law if the transaction is entered into according to its essential principles. Finally, the incidental elements of a transaction are the expansion or limitation of the direct consequences of the transaction, as well as its ancillary provisions. Natural and incidental elements of the agreement may be severed while the essential elements may not. Accordingly, if an anti-competitive provision is included in an agreement, it should be capable of being severed as far as it is ancillary to the concept of the transaction.  Section 11 of the Latvian Competition Law provides that prohibited agreements are <u>null and void</u> from the moment of being entered into (see above (1)). The above provision of the Competition Law might be interpreted to the effect that the whole agreement is null and void (derogating from the Latvian Civil Law); however, there is no case-law to support such an interpretation. Either way, it is advisable to include a severability clause in any agreements that contain clauses which may potentially distort competition.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>

<p><b>1. Legislation/Rules</b></p>	<p>See <i>European Union*</i></p> <p><u>Latvian Competition Act</u></p> <p>Republic of Latvia Regulation No. 434 “Regarding Vertical Agreement Exemption from the Agreement Prohibition Specified in Section 11, Paragraph one of the Competition Law” - Similar in substance to Regulation 2790/1999 EC <b>Block Exemption</b></p>
<p><b>2. Regulation of Price</b></p>	<p>(a) recommended sales prices: recommended sales prices are permitted.</p> <p>(b) minimum sales prices: prohibited under Regulation No. 434.</p> <p>(c) maximum sales prices: may be permitted.</p> <p>Also see <i>European Union*</i></p>
<p><b>3. Restrictions</b></p>	<p>Latvian Competition Act and regulations generally mirror the <i>European Union*</i> provisions. (See <i>European Union*</i> for details of the general prohibition). In particular:</p> <p>(a) territories: provisions in vertical agreements restricting <b>active sales</b> by a purchaser into exclusive territories, which the seller has reserved for himself or granted to another distributor are exempt from the prohibition provided that such restriction does not apply to the sales performed by the clients of the distributor.</p> <p>(b) customers: such restrictions are generally prohibited.</p> <p>Note: the following are explicitly excluded from the exemption to the prohibition provided in the Regulations:</p> <p>(i) restriction of sales to consumers by a participant of a selective distribution system which performs economic activity at the level of the retail trade, except the restriction of sales by such participant from a place at which he or she has not been authorized to sell by the other participants of the system;</p> <p>(ii) restriction of mutual sales between the participants of a selective distribution system operating at the same or different levels of distribution; and</p> <p>(iii) restriction on the possibilities of a seller (who supplies goods to a purchaser for the production of goods) to sell the goods as spare parts to consumers or to providers of repair or other services which the</p>

	<p>purchaser has not approved as the providers of repair or other services for the goods thereof.</p> <p>(c) customer groups: vertical agreements restricting <b>active sales</b> by a purchaser into exclusive client groups, which the seller has reserved for himself or granted to another distributor are exempt from the prohibition provided that such restriction does not apply to the sales performed by the clients of the distributor.</p>
<b>4. Active/Passive Sales Restrictions</b>	<p>See <i>European Union</i>*</p> <p>Note: Restriction of <b>passive sales</b> are not exempt from prohibitions on territorial restrictions provided in the Latvian Competition Act, therefore a distributor cannot be restricted from making <b>passive sales</b>.</p>
<b>5. Non-compete provisions</b>	<p>Latvian Competition Act and regulations mirror the <i>European Union</i>* provisions. (Please see <i>European Union</i>*)</p>
<b>6. Restrictions on competing products</b>	<p>See <i>European Union</i>*</p> <p>In addition, provisions stipulating a direct or indirect duty on a participant of a <b>selective distribution system</b> not to sell goods competing with the goods of the seller/supplier are prohibited. (Regulation No. 434).</p>
<b>7. Severability</b>	<p>See above, Part A - 12</p>

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## Intellectual Property and Competition Law

### Lithuania

Prepared by Lex Mundi member firm LAWIN

<b><u>Part A - Technology Licenses</u></b>	Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.
<b>1. Legislation/Rules</b>	<p><u>See European Union*</u></p> <p>The Republic of Lithuania Law on Competition – mirrors the provisions of Article 81 of the Treaty of Rome. Pursuant to the law “any agreements which have as their object the restriction of competition or which restrict or may restrict competition shall be prohibited and shall be void from the moment of conclusion thereof” (Section 5(1)).</p> <p>Lithuanian Competition Council Decree No 1S-132 of 2 September 2004 stipulates that agreements prohibited under Section 5(1) of the Law on Competition, which may not affect the trade within the EU member states but comply with the requirements provided for in the Commission Regulation (EC) 772/2004 shall be exempted.</p>
<b>2. Market Shares</b>	See European Union*
<b>3. Duration</b>	<p>See European Union*</p> <p>(a) intellectual property rights, generally: No specific provisions in Lithuanian law; however, the duration of the licence cannot exceed the duration of the licensed right.</p> <p>(b) know-how: No specific national legislation in Lithuanian law for the maximum duration of know-how licences. Note: It is understood that protection against infringement of commercial (trade) secrets only possible to the extent that the commercial (trade) secret remains secret.</p>
<b>4. Regulation of Price</b>	See European Union*
<b>5. Limitation of Production</b>	See European Union*
<b>6. Tie-in Clauses</b>	See European Union*
<b>7. General Restrictions</b>	(a), (b), (c) and (d) See European Union*
<b>8. Active/Passive Sales</b>	See European Union*

<b>Restrictions</b>	
<b>9. Restriction on exploitation of Licensee IP</b>	See European Union*
<b>10. Improvements</b>	(a), (b), (c) and (d) See European Union*
<b>11. Challenge to IPR</b>	See European Union*  Lithuanian laws do not prohibit a licensor from terminating the agreement should a licensee challenge licensor's right to IP.
<b>12. Severability</b>	The Law on Competition stipulates that all agreements which have as their object the restriction of competition or which restrict or may restrict competition shall be prohibited and shall be null and void from the moment of conclusion thereof (Section 5(1)).  Civil Code of the Republic of Lithuania establishes a principle of severability of the void clause from the remaining agreement, unless the contracting parties would not have entered into the agreement without the void clause. However, there was no case-law yet on the severability of an anticompetitive clause from the remaining agreement and it is not clear whether the anticompetitive clause would be severed or would result in the agreement being void.
<b><u>Part B - Distribution Agreements</u></b>	Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.
<b>1. Legislation/Rules</b>	Lithuanian Competition Council Decree No 1S-132 of 2 September 2004 stipulates that agreements prohibited under Section 5(1) of the Law on Competition, which may not affect the trade within the EU member states but comply with the requirements provided for in the Commission Regulation (EC) 2790/1999 shall be exempted. The annual turnover amounts provided for in the Regulation (EC) 2790/1999 expressed in Euros are reduced 10 times.  See European Union*
<b>2. Regulation of Price</b>	(a), (b) and (c) See European Union*
<b>3. Restrictions</b>	(a), (b) and (c) See European Union*
<b>4. Active/Passive Sales Restrictions</b>	See European Union*
<b>5. Non-compete provisions</b>	See European Union*

<b>6. Restrictions on competing products</b>	See European Union*
<b>7. Severability</b>	See above (Part A – 12. Severability)

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## Intellectual Property and Competition Law

### Malaysia

Prepared by Lex Mundi member firm Skrine

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	<p><u>Copyright Act 1987 ("Copyright Act")</u></p> <p><u>Trade Marks Act 1976 ("TMA")</u></p> <p><u>Patents Act 1983 ("Patents Act")</u></p> <p><u>Industrial Designs Act 1976 ("IDA")</u></p> <p><u>Layout Design of Integrated Circuits at 2000 ("LDICA")</u></p> <p><u>Franchise Act 1998 ("FA")</u></p> <p>No general Malaysian legislation on competition; however provision is made for specific industries e.g. telecommunications industry (Communication and Multimedia Act, Section 133).</p>
<b>2. Market Shares</b>	No
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: No express statutory provisions.</p> <p>(b) know-how: No statutory provisions.</p>
<b>4. Regulation of Price</b>	No express provisions preventing contracting parties from reaching agreement on regulation of price.
<b>5. Limitation of Production</b>	No express provisions limiting agreement on output by a licensee.
<b>6. Tie-in Clauses</b>	No express general provisions prohibiting tie-in clauses. Note: specific industries may have restrictions on imposition of tie-in clauses e.g. telecommunications industry, which is governed by the Communications and Multimedia Act 1998.
<b>7. General Restrictions</b>	<p>(a), (b), (c) and (d) Generally no express restriction on such provisions.</p> <p>Note: Patents Act - any clause or condition in a licence contract which imposes on the licensee restrictions not derived from the rights conferred on the patent owner under the Patents Act or which are unnecessary for the safeguarding of the patent owner's rights, shall be deemed invalid, subject to</p>

	certain exceptions (Section 45). It is explicitly provided that licensor and licensee may agree in writing to restrict the national territory, the time and field of use in which the licensee is licensed to exploit the patented invention (Section 43.1)
<b>8. Active/Passive Sales Restrictions</b>	Generally no express restriction on such provisions.
<b>9. Restriction on exploitation of Licensee IP</b>	Section 45 of the Patents Act (see above - 7) may invalidate a restriction on the licensee's ability to exploit the licensee's own IP or carry out R and D.
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: No specific legislation in Malaysia; to be agreed between the parties.</p> <p>(b) an exclusive licence of severable improvements: No specific legislation in Malaysia; to be agreed between the parties.</p> <p>(c) a non-exclusive licence of severable improvements: No specific legislation in Malaysia; to be agreed between the parties.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: No specific legislation in Malaysia; to be agreed between the parties.</p>
<b>11. Challenge to IPR</b>	No specific legislation in Malaysia prohibiting such clauses; such a term to be negotiated between the parties.
<b>12. Severability</b>	No specific provision in Malaysian law for severance of anti-competitive provisions in an agreement - would be dependent on the wording of the agreement, which may provide for severance of provisions without affecting the validity of the rest of the agreement.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	Trade Descriptions Act in 1972 ("TDA")
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: A recommended sales price is not prohibited. Note: It is an offence for a supplier to indicate that the price they are offering goods is equal or less than the recommended sales price (TDA).</p> <p>(b) minimum sales prices: No specific legislation in Malaysia.</p> <p>(c) maximum sales prices: No specific legislation, however the Ministry of Domestic Trade Consumer Affairs has advised that goods sold pursuant to the Direct Sales Act 1993 should not have a retail sales price exceeding four times the cost price of the product.</p>

<b>3. Restrictions</b>	<p>(a) territories: May be prohibited under the Contracts Act: “Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is to that extent void” (subject to specific exceptions).</p> <p>(b) customers: see (a) above.</p> <p>(c) customer groups: see (a) above.</p>
<b>4. Active/Passive Sales Restrictions</b>	<p>Generally no express prohibition on such provisions.</p>
<b>5. Non-compete provisions</b>	<p>Section 28 of the Contracts Act (see Part A - 1 above) may prohibit <b>non-compete</b> provisions after the term of the agreement.</p>
<b>6. Restrictions on competing products</b>	<p>See above part B - 3.</p>
<b>7. Severability</b>	<p>See above part A - 12.</p>

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## Intellectual Property and Competition Law

### Mauritius

Prepared by Lex Mundi member firm De Comarmond & Koenig

<b><u>Part A - Technology Licenses</u></b>	Primary legislation provided only - specific guidance not provided.
1. <b>Legislation/Rules</b>	<u>The Fair Trading Act 1979</u>  <u>Protection Against Unfair Practices (Industrial Property Rights) Act 2002</u>  <u>The Patents, Industrial Designs and Trademarks Acts 2002</u>

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## Intellectual Property and Competition Law

### New Zealand

Prepared by Lex Mundi member firm Simpson Grierson

<b><u>Part A - Technology Licenses</u></b>	
<p><b>1. Legislation/Rules</b></p>	<p><u>Commerce Act 1986</u> - General competition legislation: Prohibition on contracts, arrangements or understandings which have the purpose or (likely) effect of substantially lessening competition in a market.</p> <p>s.45 provides for exception from most restrictive trade practice provisions for Statutory IP rights (see below). Only s.36 s/36A (Taking advantage of market power) and s.37/s.38 (resale price maintenance) still apply.</p> <p>s.27: Provisions which have the purpose, or have or are likely to have the effect, of substantially lessening competition in a market are prohibited.</p> <p>s.36: If a licensor has substantial market power he is prohibited from taking advantage of that power for the purpose of restricting the entry of a person into a market, preventing or deterring a person from engaging in competitive conduct in a market or eliminating a person from a market.</p> <p>s.45 "Statutory IP rights" are those rights conferred by: the Patents Act 1953; the Designs Act 1953; the Trade Marks Act 2002; the Copyright Act 1994; the Plant Variety Rights Act 1987; and the Layout Designs Act 1994.</p>
<p><b>2. Market Shares</b></p>	<p>None specifically. However, Commerce Act s.36 and 37 only apply to organisations with substantial market power. (The definition of substantial market power includes the ability to raise prices above supply cost without rivals taking away customers in due time).</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights, generally: Patents: after a patent ceases to be in force, a licence can be terminated on 3 month's notice. Other statutory IP rights: no maximum duration.</p> <p>(b) know-how: No maximum duration for licences, provided that the duration does not have the purpose or (likely) effect of substantially lessening competition in a market (Commerce Act s.27).</p>
<p><b>4. Regulation of Price</b></p>	<p>Statutory IP licences: Prices may be recommended, provided these are non-binding (s.39). Prohibition on setting minimum sales prices (s.37).</p> <p>Other non-Statutory IP licences (e.g. know-how): As above, plus maximum resale prices prohibited if substantially lessen competition (s.27 see above); or if it has the effect of fixing, controlling or maintaining prices between competitors (s.30).</p>

<b>5. Limitation of Production</b>	<p>Statutory IP licences: Yes, though this is unlikely to be an issue.</p> <p>Other non-Statutory IP licences: Necessary to assess whether the output limit had the purpose of (likely) effect of substantially lessening competition.</p>
<b>6. Tie-in Clauses</b>	<p>Patents: Tying clauses generally prohibited by the Patents Act 1953 s.66 - both requiring and prohibiting the purchase of goods from a certain party.</p> <p>Other IP: Permissible unless the licensor has substantial market power (s.36). see Part A - 1, above.</p>
<b>7. General Restrictions</b>	<p>(a) customers: Statutory IP licences: Likely to be permissible unless licensor has substantial market power. see s36 (Part A - 1) above. Other non-Statutory IP licences: Permissible unless prohibited under s.36 (see above); substantially lessens competition under s.27 (see above); or a 3<sup>rd</sup> party competitor of either the licensor or licensee was excluded by the agreement and the exclusionary provision has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market (s.29).</p> <p>(b) customer groups: See (a) above</p> <p>(c) field of use: See (a) above</p> <p>(d) territory: See (a) above</p>
<b>8. Active/Passive Sales Restrictions</b>	<p>Statutory IP licences: Likely to be permissible unless licensor has substantial market power. See s.36 (Part A - 1) above</p> <p>Other non-Statutory IP licences: Permissible unless prohibited under s.36; or substantially lessens competition under s.27 (see above).</p>
<b>9. Restriction on exploitation of Licensee IP</b>	<p>Statutory IP licences: Likely to be permissible unless licensor has substantial market power. see s36 (Part A - 1)above</p> <p>Other non-Statutory IP licences: Permissible unless prohibited under s.36; or substantially lessens competition under s.27 (see above).</p>
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: Statutory IP licences: Likely to be permissible unless licensor has substantial market power. See s.36 (Part A - 1) above. Other non-Statutory IP licences: Permissible unless prohibited under s.36; or substantially lessens competition under s.27 (see above).</p> <p>(b) an exclusive licence of severable improvements: see (a) above.</p> <p>(c) a non-exclusive licence of severable improvements: see (a) above.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: see (a) above.</p> <p>Note: In each case the terms of licence agreement will be more important than those of the Commerce Act.</p>

<p><b>11. Challenge to IPR</b></p>	<p>Yes, dependent on terms of licence agreement.</p> <p>Generally the terms of the Commerce Act will not apply as the s.45 exception applies. If this was only a pretext for termination, then it would be necessary to examine whether the licensor has substantial market power and is taking advantage of that power for the purpose of restricting the entry of a person into a market, preventing or deterring a person from engaging in competitive conduct in a market or eliminating a person from a market under s36.</p>
<p><b>12. Severability</b></p>	<p>Generally anti-competitive provisions may be severed, dependent of their nature and the extent to which they form the basis of the contract.</p> <p>Note: Patents Act 1953: Prohibited tying provisions will result in the agreement being void, except: (a) where, at the time the agreement was made, the licensor was willing to offer the patented item on reasonable terms without a tying provision, and the purchaser can relieve itself of the provision upon 3 months' notice with payment of reasonable compensation to the licensor as may be determined by a specified arbitrator; or (b) if the provision only prohibits any person from selling goods other than those supplied by a particular person, or reserves the right to supply such new parts of the patented article as may be required to put or keep it in repair.</p>
<p><b><u>Part B - Distribution Agreements</u></b></p>	
<p><b>1. Legislation/Rules</b></p>	<p><u>Commerce Act</u> - see above.</p>
<p><b>2. Regulation of Price</b></p>	<p>(a) recommended sales prices: No restriction provided there is no obligation to comply with the recommendation (s.39).</p> <p>(b) minimum sales prices: Prohibited (s.37).</p> <p>(c) maximum sales prices: Prohibited if the restriction has the purpose or effect of lessening competition (s.27 see Part A -1, above) or if it has the effect of fixing, controlling or maintaining prices between competitors (s.30).</p>
<p><b>3. Restrictions</b></p>	<p>(a) territories: Permissible unless the restriction has the effect of substantially lessening competition (s27); or a 3<sup>rd</sup> party competitor of either the licensor or licensee was excluded by the agreement and such exclusionary provision has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market (s.29).</p> <p>(b) customers: see (a) above.</p> <p>(c) customer groups: see (a) above.</p>
<p><b>4. Active/Passive Sales</b></p>	<p>Permissible unless the restriction has the effect of substantially lessening competition (s27); or a 3<sup>rd</sup> party is excluded which substantially lessens</p>

<b>Restrictions</b>	competition (s.29) (see Part B - 3, above).
<b>5. Non-compete provisions</b>	Commerce Act: Permissible provided restriction does not substantially lessen competition (s.27).  Common Law: restraint of trade must be reasonable in the circumstances - this will depend on the facts.
<b>6. Restrictions on competing products</b>	Permissible unless the restriction has the effect of substantially lessening competition (s27) or constitutes a prohibited tying clause (prohibiting purchases) under the Patents Act (see Part A - 6, above).
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Nicaragua

Prepared by Lex Mundi member firm Alvarado y Asociados

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	No competition law regime. Licensing, transfers, mergers and acquisitions of companies are regulated only in regard to their procedure by the <u>Commercial Code</u> .
<b>2. Market Shares</b>	N/A
<b>3. Duration</b>	(a) intellectual property rights, generally: no specific stipulation, will depend on the terms of the licence agreement.  (b) know-how: no specific stipulation, will depend on the terms of licence agreement.
<b>4. Regulation of Price</b>	Yes. A licensor may regulate directly or indirectly the prices at which licensee sells products provided this is stipulated in the licence agreement.
<b>5. Limitation of Production</b>	Yes, provided this is stated in the licence agreement.
<b>6. Tie-in Clauses</b>	Yes, provided this is stated in the licence agreement.
<b>7. General Restrictions</b>	(a) customers: yes, provided any restrictions are stated in the licence agreement.  (b) customer groups: see (a) above  (c) field of use: see (a) above.  (d) territory: see (a) above.
<b>8. Active/Passive Sales Restrictions</b>	Yes, see above Part A - 7(d).
<b>9. Restriction on exploitation of Licensee IP</b>	Yes, provided such restrictions are stated in the licence agreement.
<b>10. Improvements</b>	There is no restrictive law or regulation on these points.

11. <b>Challenge to IPR</b>	Yes
12. <b>Severability</b>	Yes, anti-competitive provisions included in an agreement are capable of being severed.
<b><u>Part B - Distribution Agreements</u></b>	
1. <b>Legislation/Rules</b>	N/A
2. <b>Regulation of Price</b>	(a) recommendation: no restrictive specific law or regulation on this matter. Restrictions on sales prices must be stated and agreed by the parties in any agreement.  (b) minimum sales prices: see (a) above.  (c) maximum sales prices: see (a) above.
3. <b>Restrictions</b>	(a) territories: no specific law or regulation. Reseller may be restricted to certain territories, customers or group of customers as provided for in the agreement.  (b) customers: see (a) above.  (c) customer groups: see (a) above.
4. <b>Active/Passive Sales Restrictions</b>	Yes, the reseller can be restricted from making <b>active</b> or <b>passive sales</b> provided he is bound not to do so by an agreement or contract.
5. <b>Non-compete provisions</b>	Any such restrictions must be stated in the agreement.
6. <b>Restrictions on competing products</b>	Yes, the reseller can be restricted from selling competing products provided he is legally bound not to do so by an agreement or contract.
7. <b>Severability</b>	See above Part A-12.

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## Intellectual Property and Competition Law

### Paraguay

Prepared by Lex Mundi member firm Peroni Sosa Tellechea Burt & Narvaja

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	<p><u>Trademark Law N° 1298/1998.</u></p> <p><u>Law N° 1328/1998</u> (regarding copyrights and related rights)</p> <p><u>Law N° 1630/2000</u> (regarding patents)</p> <p><u>Law N° 868/81</u> (regarding Industrial Models &amp; designs)</p>
<b>2. Market Shares</b>	N/A
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: Patents: Cannot exceed term of patent right. Copyright and related rights/Industrial Models and Designs: No maximum duration. Trademarks: duration established in agreement.</p> <p>(b) know-how: Not specifically regulated. Know-how in relation to specific IPR regulated as (a) above.</p>
<b>4. Regulation of Price</b>	<p>Trademarks / Copyright and related rights / Industrial Models and Designs: Yes, licensor may regulate price - this must form part of the licence agreement.</p> <p>Patents (voluntary licences): may be regulated subject to prohibition on clauses contrary to good commercial competition. Patents (obligatory licences): government may establish a maximum price.</p>
<b>5. Limitation of Production</b>	<p>Trademarks / Copyright and related rights / Industrial Models and Designs: Yes, a licensor may limit output - this must form part of the licence agreement.</p> <p>Patents: No, the law prohibits any limitation that will negatively affect the public's interest.</p>
<b>6. Tie-in Clauses</b>	<p>Trademarks / Copyright and related rights / Industrial Models and Designs: Yes, but this must form part of the licence agreement.</p> <p>Patents: Yes. A licensor may require the licensee to purchase raw materials from the licensor or a specified third party; however if the price of the materials exceeds that of the international price, the licensee may still buy</p>

	such materials from another party.
<b>7. General Restrictions</b>	<p>Trademarks / Industrial Models and Designs: (a), (b), (c) &amp; (d) - Yes</p> <p>Patents: (a) (b) &amp; (c) - May be restricted unless the restriction is considered damaging to commerce. (d) - Cannot limit territory to Paraguay; must include territories with which Paraguay has an international commercial integration treaty (i.e. Mercosur members).</p> <p>Copyrights and related rights: (a) (b) &amp; (c) - Yes. (d) - Yes, but limited to Paraguay. Can restrict within Paraguay.</p>
<b>8. Active/Passive Sales Restrictions</b>	<p>Trademarks / Copyright and related rights / Industrial Models and Designs: Yes.</p> <p>Patents: Yes, unless the restriction is damaging to commerce.</p>
<b>9. Restriction on exploitation of Licensee IP</b>	<p>No restriction is permitted.</p> <p>Note: the licensor cannot restrict the licensee from exploiting its own intellectual property or carry out R&amp;D except if the product or service is in direct competition with the licensed service or product. Paraguayan Civil Code does not permit abusive clauses in license agreements that notably benefits one of the parts.</p>
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: Trademarks / Copyright and related rights / Industrial Models and Designs: Yes; Patents: No.</p> <p>(b) an exclusive licence of severable improvements: Trademarks / Copyright and related rights / Industrial Models and Designs: Yes; Patents: Yes.</p> <p>(c) a non-exclusive licence of severable improvements: Trademarks / Copyright and related rights / Industrial Models and Designs: Yes; Patents: Yes.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Trademarks / Copyright and related rights / Industrial Models and Designs: Yes; Patents: Cannot assign, but may grant an exclusive licence.</p>
<b>11. Challenge to IPR</b>	Yes
<b>12. Severability</b>	Anti-competitive provisions are valid in Paraguay, but if severed, it only affects said provision, the rest of the agreement continues valid and enforceable.
<b><u>Part B - Distribution Agreements</u></b>	

<b>1. Legislation/Rules</b>	No further legislation referred to.
<b>2. Regulation of Price</b>	(a) recommended sales prices: Yes, no restriction. (b) minimum sales prices: Yes, no restriction. (c) maximum sales prices: Yes, no restriction. The distribution law establishes an obligation to maintain sales quotas.
<b>3. Restrictions</b>	(a) territories: Yes (b) customers: Yes (c) customer groups: Yes
<b>4. Active/Passive Sales Restrictions</b>	Yes
<b>5. Non-compete provisions</b>	Yes
<b>6. Restrictions on competing products</b>	Yes, such provisions valid under Paraguayan laws.
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Peru

Prepared by Lex Mundi member firm Estudio Olaechea

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	<u>Decision 486 of the Andean Community</u> as a Supra National Law <u>Peruvian Intellectual Property Law (DL 823)</u>
<b>2. Market Shares</b>	No.
<b>3. Duration</b>	(a) intellectual property rights, generally: The maximum duration of a licence of intellectual property rights is until the licensed intellectual property right expires, unless the licence agreement specifies a duration.  (b) know-how: So long as the know-how remains secret.
<b>4. Regulation of Price</b>	Yes, the licensor can regulate the price. Note: the price cannot be below the cost of the product, as this will act against free competition.
<b>5. Limitation of Production</b>	Yes, by agreement between the parties.
<b>6. Tie-in Clauses</b>	Yes
<b>7. General Restrictions</b>	For both exclusive and nonexclusive licences;  (a) specified customers: Yes  (b) customer groups: Yes  (c) field of use: Yes  (d) territory: Yes
<b>8. Active/Passive Sales Restrictions</b>	Yes
<b>9. Restriction on exploitation of Licensee IP</b>	Yes, but only if agreed between the parties.
<b>10. Improvements</b>	(a) an assignment of severable improvements: No

	<p>(b) an exclusive licence of severable improvements: No</p> <p>(c) a non-exclusive licence of severable improvements: No</p> <p>(d) an assignment or exclusive licence of non-severable improvements: No</p>
<b>11. Challenge to IPR</b>	Yes, but only if provided for in the agreement.
<b>12. Severability</b>	Anti-competitive provisions are capable of being severed.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: There are only restrictions if the company has a monopolist position.</p> <p>(b) minimum sales prices: There are only restrictions if the company has a monopolist position.</p> <p>(c) maximum sales prices: There are only restrictions if the company has a monopolist position.</p>
<b>3. Restrictions</b>	<p>(a) territories: Yes</p> <p>(b) customers: Yes</p> <p>(c) customer groups: Yes</p>
<b>4. Active/Passive Sales Restrictions</b>	Yes
<b>5. Non-compete provisions</b>	Yes
<b>6. Restrictions on competing products</b>	Yes
<b>7. Severability</b>	See above Part A - 12

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## Intellectual Property and Competition Law

### Philippines

Prepared by Lex Mundi member firm Romulo Mabanta Buenaventura Sayoc & de los Angeles

<b><u>Part A - Technology Licenses</u></b>	
1. <b>Legislation/Rules</b>	<p><u>Intellectual Property Code (Republic Act Number 8292).</u></p> <p>s.87 provides a list of prohibited provisions</p>
2. <b>Market Shares</b>	N/A
3. <b>Duration</b>	<p>(a) intellectual property rights, generally: No specific provision limiting duration of IP licences. Licence duration is left to agreement between the parties. It is understood however that a patent licence may not exceed the life time of the patent.</p> <p>(b) know-how: The Philippines still has no Trade Secrets law. Protection of Trade Secrets is effected through contractual provisions.</p>
4. <b>Regulation of Price</b>	<p>No, provisions pursuant to which the licensor reserves the right to affect the sale or resale prices of products manufactured on the basis of the licence are deemed <i>prima facie</i> to have an adverse effect on competition and trade (IP Code Section 87.2).</p>
5. <b>Limitation of Production</b>	<p>No, provisions that contain restrictions regarding volume and structure of production shall be deemed <i>prima facie</i> to have an adverse effect on competition and trade (IP Code Section 87.3).</p>
6. <b>Tie-in Clauses</b>	<p>No, provisions which impose upon the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials and other technologies or of permanently employing personnel indicated by the licensor, shall be deemed <i>prima facie</i> to have an adverse effect on competition and trade (IP Code Section 87.1).</p>
7. <b>General Restrictions</b>	<p>(a) specified customers: There is no prohibition of such restrictions in section 87.</p> <p>(b) customer groups: There is no prohibition of such restrictions in section 87.</p> <p>(c) field of use: There is no prohibition of such restrictions in section 87.</p>

	<p>(d) territory: There is no prohibition of such restrictions in section 87.</p> <p>1987 Constitution of the Republic of the Philippines ARTICLE XII Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.</p>
<b>8. Active/Passive Sales Restrictions</b>	Restrictions on <b>active sales</b> to territories which are justified to protect the legitimate interests of the licensor (e.g. where an exclusive licence has been granted by the licensor) are excepted from the prohibition (section 87.8 of the IP Code) on agreements that restrict a licensee from exporting licensed products. Conversely restriction on <b>active</b> or <b>passive sales</b> to non-exclusively licensed territories will be prohibited.
<b>9. Restriction on exploitation of Licensee IP</b>	No, such restrictions prohibited by IP Code section 87.12.
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: No. There is prohibition on such obligations to assign improvements under section 87.6 of the IP Code.</p> <p>(b) an exclusive licence of severable improvements: No, prohibited under section 87.6.</p> <p>(c) a non-exclusive licence of severable improvements: No, prohibited under section 87.6.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: No, prohibited under section 87.6.</p>
<b>11. Challenge to IPR</b>	No. Note: a licensor cannot include a provision in an agreement preventing a licensee from challenging the validity of a patent right.
<b>12. Severability</b>	[No response].
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<u>Intellectual Property Code (Republic Act Number 8292)</u>
<b>2. Regulation of Price</b>	<p>(a) Recommended sales prices: Recommendation of prices is permissible provided this does not amount to fixing of sale prices.</p> <p>(b) Minimum sales prices: Prescribing a minimum sales price is prohibited under section 87.2 of the IP Code if this amounts to a fixing of prices.</p> <p>(c) Maximum sales prices: Prescribing a maximum sales price is</p>

	prohibited under section 87.2 if this amounts to a fixing of prices.
<b>3. Restrictions</b>	(a) Territories: No legal provision prohibiting such restrictions with respect to resellers.  (b) Customers: No legal provision prohibiting such restrictions with respect to resellers.  (c) Customer groups: No legal provision prohibiting such restrictions with respect to resellers.
<b>4. Active/Passive Sales Restrictions</b>	No prohibition with respect to <b>active</b> or <b>passive sales</b> by resellers.
<b>5. Non-compete provisions</b>	Yes. There are no specific prohibitions restricting inclusion of non-compete provisions during and after the term of an agreement, however, case-law indicates that non-compete clauses should not be allowed to continue beyond 2 years from the date of expiration of the agreement.
<b>6. Restrictions on competing products</b>	There are no statutory provisions prohibiting restriction of a reseller from selling competing products.
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Romania

Prepared by Lex Mundi member firm Nestor Nestor Diculescu Kingston Petersen

<u>Part A - Technology Licenses</u>	
1. <b>Legislation/Rules</b>	<p>The <u>Competition Law no. 21/1996</u> – prohibits agreements which have as their object or effect the restriction, prevention or distortion of competition (Article 5).</p> <p>The <u>Technology Transfer Regulation and the Vertical Agreements <b>Block Exemption Regulation</b></u> – these provide <b>block exemptions</b> to the Competition Law Article 5, which will apply on condition that an agreement does not contain <b>Hard core restrictions</b> and provided that the maximum market shares are not exceeded.</p> <p>Individual exemptions may be granted by the Competition Council upon request, provided that certain conditions are met.</p> <p>Note: the agreement establishing an association between the European Communities and their Member States and Romania requires the principles contained in the <b>block exemption</b> regulations in force in the Community to be applied in full. (See. <i>European Union</i>).</p>
2. <b>Market Shares</b>	<i>As European Union</i>
3. <b>Duration</b>	<p>(a) Intellectual property rights, generally: No maximum duration provided in Romanian Legislation, however duration of an IP the licence will depend on validity of the IPR forming the subject matter of the agreement. i.e. duration of the IP right.</p> <p>(b) know-how: <i>As European Union</i></p>
4. <b>Regulation of Price</b>	<i>As European Union</i>
5. <b>Limitation of Production</b>	<i>As European Union</i>
6. <b>Tie-in Clauses</b>	<i>As European Union</i>
7. <b>General Restrictions</b>	<p>(a) customers: <i>As European Union</i></p> <p>(b) customer groups: <i>As European Union</i></p> <p>(c) field of use: <i>As European Union</i></p>

	(d) territories: <i>As European Union</i>  Note: When output restrictions are combined with exclusive territories or exclusive customer groups, the restrictive effects are increased. The combination of the two types of restraints makes it more likely that an agreement serves to partition markets and would therefore not be covered under the Technology Transfer Regulation.
<b>8. Active/Passive Sales Restrictions</b>	<i>As European Union</i>
<b>9. Restriction on exploitation of Licensee IP</b>	<i>As European Union</i>
<b>10. Improvements</b>	(a), (b), (c) & (d) - <i>As European Union</i>
<b>11. Challenge to IPR</b>	<i>As European Union</i>
<b>12. Severability</b>	<b>Hard core restrictions</b> are not capable of being severed and will result in the entire agreement being void; it is however possible to sever non- <b>Hard core</b> anti-competitive provisions included in an agreement, so that such does not lead to the entire agreement being void.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	See above, Part A - 1
<b>2. Regulation of Price</b>	(a) (b) & (c) - <i>As European Union</i>
<b>3. Restrictions</b>	(a) (b) & (c) - <i>As European Union</i>
<b>4. Active/Passive Sales Restrictions</b>	<i>As European Union</i>
<b>5. Non-compete provisions</b>	<i>As European Union</i>
<b>6. Restrictions on competing products</b>	<i>As European Union</i>
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### South Africa

Prepared by Lex Mundi member firm Bowman Gilfillan

<b><u>Part A - Technology Licenses</u></b>	
<p><b>1. Legislation/Rules</b></p>	<p>No specific legislation; however, IP licences are covered generally by the <u>Competition Act, No 89 of 1998</u> (the “Act”).</p> <p>Where an agreement is deemed anti-competitive a licensor can apply to the Competition Commission for an exemption from application of the Act. Specific grounds for exemption of IPR’s are provided for in the Act - exemptions are granted by the authorities on a case-by-case basis using a <b>rule of reason</b> approach.</p> <p>Applications for category <b>(block) exemptions</b> are permitted.</p> <p>Competition Commission enjoys concurrent jurisdiction over industries and sectors over which another regulatory body has jurisdiction. The Commission has entered into memorandums of agreement with several regulators, therefore agreements may be regulated by another regulatory body and relevant legislation and memoranda for that industry may have to be reviewed.</p> <p>The Act also contains provisions dealing with abuse of dominant position. It is unclear whether exemptions are applicable to such agreements.</p>
<p><b>2. Market Shares</b></p>	<p>The Act will not apply to a firm whose assets or annual turn-over are less than ZAR 5 Million.</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights, generally: No law regulating the duration of IP licenses; restrictions may extend beyond the expiry of any right.</p> <p>(b) know-How: No maximum specified in law.</p>
<p><b>4. Regulation of Price</b></p>	<p>A licensor cannot directly or indirectly regulate the minimum price or fix prices at which products incorporating licensed IPR are sold.</p> <p>The licensor may make a non-binding recommendation of minimum price, but it must state “recommended price” next to the price.</p> <p>Maximum Prices will only be permitted on a <b>rule of reason</b> analysis.</p>
<p><b>5. Limitation of Production</b></p>	<p>Such restriction may be permitted on a <b>rule of reason</b> approach.</p>

<p><b>6. Tie-in Clauses</b></p>	<p>Not permissible if the licensor is dominant: A firm will have dominance if it has: (i) 45%market share; (ii) 35-45% market share and cannot show that it does not have market power; or (iii) less than 35% market share but has market power.</p> <p>In other cases restriction will be assessed on a <b>rule of reason</b> approach.</p>
<p><b>7. Restrictions</b></p>	<p>(a) specified customers: The anti-competitive nature of an exclusive or non-exclusive licence is dependent on the economic and legal circumstances of the parties. Where parties are competitors an agreement containing such restrictions may be prohibited under the Act as market sharing (s.4 (1)). Where parties are non-competitors the effect will be assessed on a <b>rule of reason</b> approach.</p> <p>(b) customer groups: See (a) above.</p> <p>(c) field of use: See (a) above.</p> <p>(d) territory: The Act might not necessarily apply where the exclusive or non-exclusive licence restricts the licensee within a specified territory - this can only be determined on assessment of the economic and legal circumstances of the parties.</p>
<p><b>8. Active/Passive Sales Restrictions</b></p>	<p>Depending on the economic and legal circumstances of the parties, such restrictions may amount to an abuse of dominance and/or vertical restricted practice.</p>
<p><b>9. Restriction on exploitation of Licensee IP</b></p>	<p>Depending on the economic and legal circumstances of the parties, such restrictions may amount to an abuse of dominance and/or vertical restricted practice.</p>
<p><b>10. Improvements</b></p>	<p>(a) , (b), (c) &amp; (d) No specific restriction on such assignments or licence of improvements. Agreements are subject to general assessment of anti and pro-competitive effects of the condition.</p>
<p><b>11. Challenge to IPR</b></p>	<p>Yes, subject to the terms of any agreement.</p> <p>Any right to terminate upon challenge is subject to assessment of underlying nature of the IP. If the IP enables a firm to compete or is a significant barrier to entry to the market, a no challenge obligation may amount to contravention as an abuse of dominance or the anti-competitive aspects may outweigh any pro-competitive benefit.</p>
<p><b>12. Severability</b></p>	<p>Yes, anti-competitive provisions may be severable, provided there is a term in the agreement stating such. The Competition Tribunal can also declare whole or part of agreement void. Note: Provisions in agreements are not rendered void by the Act unless the Competition Tribunal or Competition Appeal Court declares the provision such.</p>

<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<u>Competition Act</u> , No 89 of 1998
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: The licensor may make a non-binding recommendation of minimum price, but it must state “recommended price” next to the price.</p> <p>(b) minimum sales prices: No Minimum or Fixed Prices: A licensor cannot directly or indirectly regulate the minimum price or fix prices at which products incorporating licensed IPR are sold.</p> <p>(c) maximum sales prices: Maximum Prices will only be permitted on a <b>rule of reason</b> approach.</p>
<b>3. Restrictions</b>	<p>(a) territories: The anti-competitive nature of such restrictions will be dependent on the economic and legal circumstances of the parties. Where parties are competitors such an agreement may be prohibited under the Act as market sharing (s.4 (1)). Where parties are non-competitors the effect will be assessed on a <b>rule of reason</b> basis.</p> <p>(b) customers: See (a) above.</p> <p>(c) customer groups: See (a) above.</p>
<b>4. Active/Passive Sales Restrictions</b>	The permissibility of such restrictions is dependent on the economic and legal circumstances of the parties. Such restrictions may amount to an abuse of dominance and/or vertical restricted practice.
<b>5. Non-compete provisions</b>	Such obligations may infringe provisions of the Act, depending on the economic and legal circumstances of the parties.
<b>6. Restrictions on competing products</b>	Such restrictions are prohibited if the licensor is dominant (see above, Part A - 6). Otherwise permissibility of such restrictions will be dependent on the economic and legal circumstances of the parties, subject to <b>rule of reason</b> evaluation.
<b>7. Severability</b>	See above, part A - 1

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## Intellectual Property and Competition Law

### Spain

Prepared by Lex Mundi member firm Uría Menéndez

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union*</i>  <u>Spanish Law 16/1989 of 17 July on the Defence of Competition ("LDC")</u> , Article 1 - wording very similar to Article 81(1) EC  <u>Royal Decree 378/2003</u> , Article 2(2) - directly and fully incorporates the existing EU <b>Block Exemption</b> regulation on technology transfer agreements into Spanish competition rules
<b>2. Market Shares</b>	See <i>European Union*</i>
<b>3. Duration</b>	(a) & (b) See <i>European Union*</i>
<b>4. Regulation of Price</b>	See <i>European Union*</i>
<b>5. Limitation of Production</b>	See <i>European Union*</i>
<b>6. Tie-in Clauses</b>	See <i>European Union*</i>
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union*</i>
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union*</i>
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union*</i>
<b>11. Challenge to IPR</b>	See <i>European Union*</i>
<b>12. Severability</b>	Severability will depend on nature of the provision. If a provision is a <b>Hard core restriction</b> the whole agreement will be void, unless it is individually

	exempt under Articles 3 (Authorised Cases) and 4 (Individual Authorisations from the Court) of the LDC. Other clauses deemed anti-competitive may be severed. (See <i>European Union</i> *)
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union</i> *  Royal Decree 378/2003, Article 2(1)(a) - directly incorporates Regulation 2790/1999 EC into Spanish competition law.
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>European Union</i> *
<b>3. Restrictions</b>	(a) (b) & (c) See <i>European Union</i> *
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>5. Non-compete provisions</b>	See <i>European Union</i> *
<b>6. Restrictions on competing products</b>	See <i>European Union</i> *
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Sweden

Prepared by Lex Mundi member firm Advokatfirman Vinge KB

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	Förordning (2004:1073) om gruppundantag enligt 8 a § konkurrenslagen (1993:20) för avtal om tekniköverföring - National <b>block exemption</b> mirroring the European Technology Transfer <b>Block exemption</b> Regulation (EC No. 772/2004)  See <i>European Union</i> *  <u>Protection of Trade Secrets Act</u> (Lag 1990:409 om skydd för företagshemligheter). Note: although know-how is protected under this Act, know-how is not recognised as an intellectual property right as such in Sweden.
2. <b>Market Shares</b>	See <i>European Union</i> *
3. <b>Duration</b>	(a) See <i>European Union</i> *  (b) See <i>European Union</i> *
4. <b>Regulation of Price</b>	See <i>European Union</i> *
5. <b>Limitation of Production</b>	See <i>European Union</i> *
6. <b>Tie-in Clauses</b>	See <i>European Union</i> *
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
8. <b>Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
9. <b>Restriction on exploitation of Licensee IP</b>	See <i>European Union</i> *
10. <b>Improvements</b>	(a), (b), (c) & (d) - See <i>European Union</i> *

11. <b>Challenge to IPR</b>	See <i>European Union</i> *
12. <b>Severability</b>	<p>Normally, Swedish law would permit a prohibited clause to be severed from the remaining agreement, unless the clause in question is of such material importance to the agreement that the agreement serves no real purpose without it. In such case, a court may set the entire agreement aside. In addition, a Swedish court may in some cases modify a prohibited clause in such a way that it is brought into compliance with applicable laws. An example may be a <b>non-compete</b> clause of too long a duration, where the courts may rule that the clause is valid for such period as competition law permits and not thereafter.</p> <p>See also <i>European Union</i>*</p>
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	<p>See <i>European Union</i>*</p> <p><u>Förordning (2000:1193) om gruppundantag enligt 17 § konkurrenslagen (1993:20) för vertikala avtal</u> - Swedish regulation. implementing Commission Regulation (EC) No. 2790/1999</p>
2. <b>Regulation of Price</b>	(a) (b) & (c) See <i>European Union</i> *
3. <b>Restrictions</b>	(a) (b) & (c) See <i>European Union</i> *
4. <b>Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
5. <b>Non-compete provisions</b>	See <i>European Union</i> *
6. <b>Restrictions on competing products</b>	See <i>European Union</i> *
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Switzerland

Prepared by Lex Mundi member firm Pestalozzi

<u>Part A - Technology Licenses</u>	
<p>1. <b>Legislation/Rules</b></p>	<p><u>The Trademark Act</u></p> <p><u>Design Act</u></p> <p><u>Patent Act</u></p> <p><u>Cartels Act</u> (Acart) - Restraints of competition which lead to the suppression of effective competition are unlawful and cannot be justified on grounds of economic efficiency. Competition is suppressed if any functioning of the relevant parameters of competition such as price, conditions, quantities, quality, sources of supply, channels of distributions, etc. is made impossible or if access to the market by new competitors is impossible or highly unlikely.</p> <p>Note: a literal interpretation of the Swiss constitution does not allow <i>per se</i> prohibition of restraints of competition. The Acart aims, based upon a broad interpretation of this constitutional foundation, to develop competition law in a way compatible with EU law. Agreements that significantly affect competition only become "unlawful" if they are not justified on grounds of economic efficiency and lead to the suppression of effective competition (art 5).</p>
<p>2. <b>Market Shares</b></p>	<p>Below 10% market share competition law does not apply.</p>
<p>3. <b>Duration</b></p>	<p>(a) intellectual property rights, generally: No maximum duration specified by law. General view that licences are only valid until expiry, lapse or declared invalidity of the rights, however practical exceptions have been found to exist; e.g. between rights declared invalid <i>inter partes</i> and those declared invalid <i>erga omnes</i>; licences remaining factually exclusive (a right to legally expired but unbeknownst to competitors) - in such cases a licensed may survive a declared invalidity/expiry.</p> <p>(b) know-how: As (a) above. Note: leakage of know how to one or two competitors need not necessarily mean that the licensed know how is of no further value to the licensee and as such a licensee may remain both relevant and valid.</p>

4. <b>Regulation of Price</b>	Potentially yes, however, agreements to directly or indirectly fix prices are presumed to suppress effective competition in the relevant market. This is not an absolute prohibition of these restraints of competition; it is merely a legal presumption that in these cases effective competition is suppressed and that agreements containing such restrictions are unlawful. This presumption may be disproved or refuted.
5. <b>Limitation of Production</b>	Potentially yes, however, agreements to restrict the quantities of goods or services to be produced are presumed to suppress effective competition in the relevant market. This is not an absolute prohibition of these restraints of competition; it is merely a legal presumption that in these cases effective competition is suppressed and that agreements containing such restrictions are unlawful. This presumption may be disproved or refuted.
6. <b>Tie-in Clauses</b>	Tie-in clauses are permitted subject to the effects of competition law. Specifically, clauses must not create a tie which builds a structure suitable for eliminating competition; tie ins must not inappropriately limit the licensee's economic freedom.
7. <b>General Restrictions</b>	<p>(a) specified customers: Agreements between competitors to allocate markets according to trading partners are presumed to suppress effective competition in the relevant market and thus be unlawful. Between non-competitors there is no such presumption.</p> <p>(b) customer groups: Agreements between competitors to allocate markets according to trading partners are presumed to suppress effective competition in the relevant market and thus be unlawful. Between non-competitors there is no such presumption.</p> <p>(c) field of use: market sharing between competitors is presumed to suppress effective competition in the relevant market and thus be unlawful.</p> <p>(d) territory: Agreements to allocate markets geographically are presumed to suppress effective competition in the relevant market. Between non-competitors there is no such presumption.</p> <p>These are not absolute prohibitions of such restraints of competition, merely legal presumptions, that in these cases effective competition is suppressed. These presumptions may be disproved or refuted.</p>
8. <b>Active/Passive Sales Restrictions</b>	Swiss law is similar to that of EU (see <i>European Union</i> ) - generally, restriction of <b>active sales</b> is permitted and restriction of <b>passive sales</b> should be avoided.
9. <b>Restriction on exploitation of Licensee IP</b>	It is understood that such a restriction would be legally valid however respondent commented that he was unaware of such restrictions ever being agreed.
10. <b>Improvements</b>	<p>(a) an assignment of severable improvements: Yes</p> <p>(b) an exclusive licence of severable improvements: Yes</p>

	<p>(c) a non-exclusive licence of severable improvements: Yes</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Yes</p>
<b>11. Challenge to IPR</b>	<p>No specific rule or practice. The general rule in Swiss law in situations where a party cannot in good faith be expected to continue a contractual relationship is that an agreement may be terminated; a licensee challenging the licence rights of a licensor could be considered to create such a situation.</p> <p>An agreement provision permitting a licensor to terminate in the event of a challenge is permitted. However, it may be a violation of competition to contractually prohibit a licensee from actually challenging the licensed right.</p>
<b>12. Severability</b>	<p>The provisions are capable of being severed. Severability is a general principle of Swiss law and need not even be explicitly stated in an agreement.</p>
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	<u>Cartels Act</u>
<b>2. Regulation of Price</b>	<p>(a) recommended sales prices: There are no such restrictions on prices.</p> <p>(b) minimum sales prices: There are no such restrictions on prices.</p> <p>(c) maximum sales prices: There are no such restrictions on prices.</p>
<b>3. Restrictions</b>	<p>(a) territories: Agreements between competitors to allocate markets geographically are presumed to suppress effective competition in the relevant market and hence be unlawful. Between non-competitors there is no such presumption.</p> <p>(b) customers: Agreements between competitors to allocate markets according to trading partners are presumed to suppress effective competition in the relevant market and hence be unlawful. Between non-competitors there is no such presumption.</p> <p>(c) customer groups: Agreements between competitors to allocate markets according to trading partners are presumed to suppress effective competition in the relevant market and hence be unlawful. Between non-competitors there is no such presumption.</p> <p>These are not absolute prohibitions of such restraints of competition, merely legal presumptions, that in these cases effective competition is suppressed. These presumptions may be disproved or refuted.</p>

4. <b>Active/Passive Sales Restrictions</b>	A prohibition of <b>active sales</b> outside the contract territory is likely to be lawful as long as it does not prevent <b>passive</b> competition by a distributor.
5. <b>Non-compete provisions</b>	Provided competition law applies (see part A - 2 market shares) non-compete provisions of more than five years during the term of the agreement or of more than one year after the term of the agreement, require specific justification in that they promote “economic proficiency”. (No precedent to further define the term “economic efficiency”).
6. <b>Restrictions on competing products</b>	See above, part B - 5. A distributor may be prohibited from distributing competing products.
7. <b>Severability</b>	See above, part A - 12.

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## Intellectual Property and Competition Law

### Taiwan

Prepared by Lex Mundi member firm Tsar & Tsai Law Firm

<b><u>Part A - Technology Licenses</u></b>	
<b>1. Legislation/Rules</b>	<p>Fair Trade Law (“FTL”)</p> <p>The Fair Trade Commission (“FTC”) Rules for Review of Technology Licensing Arrangement Cases by the Guidelines (the “Guidelines”)</p>
<b>2. Market Shares</b>	No
<b>3. Duration</b>	<p>(a) intellectual property rights, generally: no statutorily imposed maximum; however, licences should terminate upon expiry of the IP right or may be challenged as anti-competitive.</p> <p>(b) know-how: no statutorily imposed maximum; however, if the know-how ceases to remain secret the validity of the know-how licence may be challenged as anti-competitive.</p>
<b>4. Regulation of Price</b>	Regulation of price is prohibited under the FTL and the Guidelines as a restriction on competition.
<b>5. Limitation of Production</b>	<p>If a restriction limits competition or creates an anti-competitive effect in the relevant market of the licensed technology it will be prohibited (FTL). The Guidelines indicate the following factors should be considered in making this determination:</p> <ol style="list-style-type: none"> <li>1. Market power of the licensor in regard to the licensed technology;</li> <li>2. Market power of the licensor and licensee in the relevant market;</li> <li>3. Effect of licensing on increasing the opportunity for utilization of the licensed technology and eliminating competition;</li> <li>4. Barrier to entry in a specific market;</li> <li>5. Length of restriction imposed per the licensing arrangement; and</li> <li>6. International or industry customs as applicable to the relevant technology market.</li> </ol>
<b>6. Tie-in Clauses</b>	Generally, no - considered anti-competitive and not permitted if the tied product and the tying product are not related where the licensor is using its

	market power for the tying product to force the licensee to acquire the tied product.
<b>7. General Restrictions</b>	<p>(a) specified customers: not illegal <i>per se</i> for either exclusive or non-exclusive licences. May be in violation of the FTL if found to be anti-competitive or restricts competition in the relevant market.</p> <p>(b) customer groups: not illegal <i>per se</i> for either exclusive or non-exclusive licences. May be in violation of the FTL if found to be anti-competitive or restricts competition in the relevant market.</p> <p>(c) field of use: not illegal <i>per se</i> for either exclusive or non-exclusive licences. May be in violation of the FTL if found to be anti-competitive or restricts competition in the relevant market.</p> <p>(d) territory: not illegal <i>per se</i> for either exclusive or non-exclusive licences. May be in violation of the FTL if found to be anti-competitive or restricts competition in the relevant market.</p>
<b>8. Active/Passive Sales Restrictions</b>	In general such restrictions do not violate the FTL unless the restriction is anti-competitive or restricts competition in the relevant market.
<b>9. Restriction on exploitation of Licensee IP</b>	May be a violation of the FTL if such restriction is anti-competitive or restricts competition in the relevant market.
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements: Considered a violation of the FTL.</p> <p>(b) an exclusive licence of severable improvements: Considered a violation of the FTL.</p> <p>(c) a non-exclusive licence of severable improvements: Permitted under the FTL.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: May be a violation of the FTL.</p>
<b>11. Challenge to IPR</b>	A licensee should be allowed to challenge the licensor's right to the IPR. Restriction of such right is a violation of the FTL.
<b>12. Severability</b>	Anti-competitive provisions in an agreement may be severed.
<b><u>Part B - Distribution Agreements</u></b>	
<b>1. Legislation/Rules</b>	FTL - see above, Part A -1

2. Regulation of Price	<p>(a) recommended sales prices: Will not be deemed a <b>per se</b> violation of the FTL</p> <p>(b) minimum sales prices: Deemed a <b>per se</b> violation of the FTL.</p> <p>(c) maximum sales prices: Deemed a <b>per se</b> violation of the FTL.</p>
3. Restrictions	<p>(a) territories: Not considered <b>per se</b> illegal. The FTC will consider the seller's intent, purpose of the restriction, seller's market power, market condition, characteristics of the goods in question and the effect on market competition in determining whether the restriction violates the FTL.</p> <p>(b) customers: see (a) above</p> <p>(c) customer groups: see (a) above</p>
4. Active/Passive Sales Restrictions	If the restriction is not considered reasonable it will be illegal.
5. Non-compete provisions	Generally permitted during the term of the agreement, provided such restriction does not affect competition. The Guidelines note that restriction on manufacturing, use or distribution of competing products or technologies after expiry of the licensing agreement will be a <b>per se</b> violation of the FTL.
6. Restrictions on competing products	The Guidelines specifically prohibit post licensing restriction on manufacturing, use or distribution of competing products or technologies. Otherwise, whether restrictions imposed on a reseller from selling competing products, both generally and with respect to specific competing products, violate the FTL will depend on whether such restrictions restrict competition.
7. Severability	See above, Part A - 1

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## Intellectual Property and Competition Law

### Turkey

Prepared by Lex Mundi member firm Pekin & Pekin

<b><u>Part A - Technology Licenses</u></b>	
1. <b>Legislation/Rules</b>	<p><u>Communiqué Regarding <b>Block Exemptions</b> on Vertical Agreements No. 2002/2 as amended by Communiqué No. 2003/3</u></p> <p><u>The Act on the Protection of Competition No 4054</u></p>
2. <b>Market Shares</b>	None specifically. May be considered as part of an evaluation by the Turkish Competition Board.
3. <b>Duration</b>	<p>(a) intellectual property rights, generally: No maximum duration for licences specified in Turkish Law or Regulations however a licence shall cease if protection of the licensed right expires.</p> <p>(b) know-how: No maximum duration specified in Turkish Law or Regulations.</p>
4. <b>Regulation of Price</b>	No, a licensor cannot regulate prices at which a licensee sells products - a licensor can advise on maximum prices and recommended prices but these should not be imposed as a condition upon the licensee.
5. <b>Limitation of Production</b>	No specific law or regulation prohibiting such limitation. May be construed as a restriction on competition by the Turkish Competition Board.
6. <b>Tie-in Clauses</b>	May not be permissible - likely to be evaluated as an anti-competitive provision.
7. <b>General Restrictions</b>	<p>(a) specified customers: Yes, may be so restricted; in both exclusive and non-exclusive licences.</p> <p>(b) customer groups: Yes, exclusive and non-exclusive licences may be restricted to customer group's dependant on nature and scope of the licence.</p> <p>(c) field of use: Yes, exclusive and non-exclusive licences may be restricted to fields of use dependant on nature and scope of licence; however, not common in practice.</p> <p>(d) territory: Yes both exclusive and non-exclusive licences may be restricted by territory.</p>

8. <b>Active/Passive Sales Restrictions</b>	Restriction of <b>active sales</b> in an exclusive licence may be acceptable: restriction of <b>passive sales</b> is deemed anti-competitive and prohibited. Non-exclusive licences may not be restricted as to either <b>active</b> or <b>passive sales</b> .
9. <b>Restriction on exploitation of Licensee IP</b>	No restriction of a licensee's ability to exploit its own IP or carry out R&D may be deemed anti-competitive.
10. <b>Improvements</b>	<p>(a) an assignment of severable improvements: Yes, sometimes. Should not be of an anti-competitive nature.</p> <p>(b) an exclusive licence of severable improvements: Yes, sometimes. Should not be of an anti-competitive nature.</p> <p>(c) a non-exclusive licence of severable improvements: Yes, sometimes. Should not be of an anti-competitive nature.</p> <p>(d) an assignment or exclusive licence of non-severable improvements: Yes, sometimes. Should not be of an anti-competitive nature.</p>
11. <b>Challenge to IPR</b>	No response.
12. <b>Severability</b>	This is at the discretion of the Turkish Competition Board which may judge an agreement void based on competition law, where any agreement contrary to competition is void. Generally, where severance of an anti-competitive provision does not result in a major impact on the subject and object of the agreement it may be capable of being severed and otherwise it is likely to result in the agreement being void.
<b><u>Part B - Distribution Agreements</u></b>	
1. <b>Legislation/Rules</b>	<u>Communiqué Regarding <b>Block exemptions</b> on Vertical Agreements no 2002/2</u> as amended by communiqué no 2003/3 – note; agreements between competitors cannot benefit from competition exemptions provided under this communiqué.
2. <b>Regulation of Price</b>	<p>(a) recommended sales prices: Supplier may advise a recommended price provided this does not amount to a fixed or minimum price.</p> <p>(b) minimum sales prices: Prohibited.</p> <p>(c) maximum sales prices: Supplier can advise provided this does not amount to a fixed sale price.</p>
3. <b>Restrictions</b>	(a) territories: In an exclusive agreement the reseller may be restricted. In a non-exclusive agreement generally competition regulations prohibit such

	<p>restrictions.</p> <p>(b) customers: In an exclusive agreement a reseller may be restricted. In a non-exclusive agreement, competition regulations generally prohibit such restrictions.</p> <p>(c) customer groups: In an exclusive agreement a reseller may be so restricted. In a non-exclusive agreement competition regulations generally prohibit such restrictions.</p>
<b>4. Active/Passive Sales Restrictions</b>	Restriction of <b>active sales</b> may be acceptable: restriction of <b>passive sales</b> would be deemed anti-competitive and prohibited.
<b>5. Non-compete provisions</b>	Certain non-compete clauses are considered anti-competitive (under the Communiqué); (i) non-compete period exceeding 5 years or for an indefinite period; (ii) any direct or indirect obligation after expiration of the agreement which prohibits the reseller from production, purchase, sale or resale of services & goods; (iii) an obligation on a member of a selected distribution system where the reseller is asked not to sell any labelled goods of competitors.
<b>6. Restrictions on competing products</b>	See (iii) above. Restriction on a reseller from selling competing products both generally and with respect to specific competing products may be allowed in agreements of an exclusive nature.
<b>7. Severability</b>	See above part A – 12.

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## Intellectual Property and Competition Law

### United Kingdom

Prepared by Lex Mundi member firm Maclay Murray & Spens LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union</i> *  <u>The Competition Act 1998</u>  <u>The Enterprise Act 2002</u>
<b>2. Market Shares</b>	See <i>European Union</i> *
<b>3. Duration</b>	(a) & (b) See <i>European Union</i> *
<b>4. Regulation of Price</b>	See <i>European Union</i> *
<b>5. Limitation of Production</b>	See <i>European Union</i> *
<b>6. Tie-in Clauses</b>	See <i>European Union</i> *
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>8. Active/Passive Sales Restrictions</b>	See <i>European Union</i> *
<b>9. Restriction on exploitation of Licensee IP</b>	See <i>European Union</i> *
<b>10. Improvements</b>	(a), (b), (c) & (d) - See <i>European Union</i> *
<b>11. Challenge to IPR</b>	See <i>European Union</i> *
<b>12. Severability</b>	See <i>European Union</i> *.

<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area has been harmonised within the EU. Please see the European Union results for more detailed information on the EU provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>European Union*</i>
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>European Union*</i>
<b>3. Restrictions</b>	(a) (b) & (c) See <i>European Union*</i>
<b>4. Active/Passive Sales Restrictions</b>	See <i>European Union*</i>
<b>5. Non-compete provisions</b>	See <i>European Union*</i>
<b>6. Restrictions on competing products</b>	See <i>European Union*</i>
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### Uruguay

Prepared by Lex Mundi member firm Guyer & Regules

<b><u>Part A - Technology Licenses</u></b>	
<p><b>1. Legislation/Rules</b></p>	<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"> <li>(a) effects detrimental to commerce;</li> <li>(b) exclusive conditions of retrocession;</li> <li>(c) impediments to challenge the validity of dependent patents or licenses;</li> <li>(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</li> <li>(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.</li> </ul> <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>
<p><b>2. Market Shares</b></p>	<p>No</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights, generally: duration of the intellectual property right.</p>

	(b) know-how: no specific provisions.
<b>4. Regulation of Price</b>	<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>
<b>5. Limitation of Production</b>	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”.
<b>6. Tie-in Clauses</b>	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”.
<b>7. General Restrictions</b>	<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> <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)).</p>
<b>8. Active/Passive Sales Restrictions</b>	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).
<b>9. Restriction on exploitation of Licensee IP</b>	May be prohibited with regard to patents under Patent Act Number 17.164 Article 52(d) - see above, Part A - 1.
<b>10. Improvements</b>	<p>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.</p> <p>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</p>

	<p>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”.</p>
<p>11. <b>Challenge to IPR</b></p>	<p>There are no specific provisions regarding trade mark licenses.</p> <p>Patent Act Number 17.164 Article 52(c) (see above, Part A - 1) may prohibit such clauses in the case of patents.</p>
<p>12. <b>Severability</b></p>	<p>Anti-competitive provisions are capable of being severed and will not result in an agreement being void.</p>
<p><b><u>Part B - Distribution Agreements</u></b></p>	
<p>1. <b>Legislation/Rules</b></p>	<p>Competition Law Number 17.243 Article 14</p>
<p>2. <b>Regulation of Price</b></p>	<p>(a) recommended sales prices: not <b>per se</b> prohibited under the Competition Law.</p> <p>(b) minimum sales prices: not <b>per se</b> prohibited under the Competition Law.</p> <p>(c) maximum: sales prices: not <b>per se</b> prohibited under the Competition 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>
<p>3. <b>Restrictions</b></p>	<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</p>

	companies or consumers”.
<b>4. Active/Passive Sales Restrictions</b>	No specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.
<b>5. Non-compete provisions</b>	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.
<b>6. Restrictions on competing products</b>	No specific prohibition. Such clauses only deemed anti-competitive if they fall under the general prohibition of Article 14.
<b>7. Severability</b>	See above Part A-12

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**Intellectual Property and Competition Law**

**USA, Federal**

<b>Part A - Technology Licenses</b>	
<p><b>1. Legislation/Rules</b></p>	<p><u>The Sherman Act, 15 U.S.C. 1</u> - antitrust prohibition against contracts, combinations, and conspiracies “in restraint of trade or commerce among the several States or with foreign nations”; prohibits monopolization, attempts to monopolize, and conspiracies to monopolize “any part of trade or commerce among the several States or with foreign nations”.</p> <p>Violations may be prosecuted as civil or criminal offenses. Criminal prosecutions usually limited to <b>per se</b> offenses (typically: price-fixing, customer allocation, bid-rigging or other cartel activities) and are punishable by fines and imprisonment. Corporate defendants may be fined up to \$10 million, other defendants up to \$350,000, and individuals sentenced to up to 3 years imprisonment. The Justice Department (JD) has sole responsibility for the criminal enforcement. In Civil proceedings, the JD may obtain injunctive relief against prohibited practices. Private plaintiffs may obtain injunctive relief and treble damages.</p> <p><u>The Clayton Act, 15 U.S.C. 12</u> expands on the general prohibitions of the Sherman Act and addresses anti-competitive problems in their incipiency: prohibition on mergers, acquisitions, or stock sales that have the effect of creating a monopoly. Section 3 of the Clayton Act prohibits any person engaged in commerce from conditioning the lease or sale of goods or commodities upon the purchaser's agreement not to use the products of a competitor, if the effect may be "to substantially lessen competition or to tend to create a monopoly in any line of commerce." In evaluating transactions, the trend of recent authority is to use the same analysis employed in the evaluation of tying under Section 1 of the Sherman Act to assess a defendant's liability under Section 3 of the Clayton Act. Section 2 of the Clayton Act, known as the <u>Robinson-Patman Act</u>, prohibits price discrimination in certain circumstances. In practice, the Commission has exercised primary enforcement responsibility for this provision.</p> <p><u>The Federal Trade Commission Act</u>. Section 5 of the Federal Trade Commission Act ("FTC Act") declares unlawful "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." The Commission may take administrative action against conduct that violates the Sherman Act and the Clayton Act, as well as anti-competitive practices that do not fall within the scope of the Sherman or Clayton Acts. The Commission may also seek</p>

	<p>injunctive relief in federal court against any such conduct under Section 13(b) of the FTC Act.</p> <p><u>The National Cooperative Research and Production Act, 15 U.S.C. 4301-06</u>, clarifies the substantive application of the U.S. antitrust laws to joint research and development ("R&amp;D") activities and joint production activities. The Act requires U.S. courts to judge the competitive effects of a challenged joint R&amp;D or joint production venture, or a combination of the two, in properly defined relevant markets and under a <b>rule of reason</b> standard.</p>
<p><b>2. Market Shares</b></p>	<p>There is no legislative threshold below which the laws do not apply. However, United States anti-trust law apply a market power analysis to some forms of commercial activities in order to determine whether they violate the anti-trust and unfair competition laws.</p> <p>The Intellectual Property Guidelines establish a “<b>safety zone</b>” within which licensing activities will ordinarily not be challenged by the U.S. Department of Justice or the Federal Trade Commission. Private parties and state governments are not bound by these Guidelines, but federal courts often look to them for guidance.</p> <p>The <b>safety zone</b>:</p> <p>When market share data for a goods market covered by the intellectual property are available, the agencies will generally not challenge a licensing arrangement if (1) the restraint is not facially anti-competitive in that it involves <b>per se</b> illegal agreements or other restraints that almost always reduce output or increase prices and (2) the licensor and licensee(s) collectively account for no more than twenty percent of each affected relevant goods market.</p> <p>When goods market share data is not available, a licensing arrangement still qualifies for the <b>safety zone</b> if (1) it is not facially anti-competitive and (2) there are at least four independent technologies in addition to the parties’ technologies that may substitute for the parties’ technologies at comparable cost to the user.</p> <p>Finally, if a licensing restraint may affect an “innovation market” rather than a goods market, then the <b>safety zone</b> exists if (1) the restraint is not facially anti-competitive and (2) at least four independent entities in addition to the parties possess the specialized assets and have the incentive to engage in research and development that could substitute closely for that of the parties. The <b>safety zone</b> does not apply to licensing transactions that effectively transfer all commercialization rights to the licensee (i.e., are exclusive against the licensor, as well), and therefore are reviewed as acquisitions of intellectual property.</p>
<p><b>3. Duration</b></p>	<p>(a) intellectual property rights generally: The maximum duration is the life of the intellectual property (i.e. until expiry as provided by statute; lapse or declared invalidity of the rights).</p>

	<p>(b) know-how: A license for a trade secret may be valid as long as the subject of the license remains a trade secret. However, there may be situations where it may be appropriate for the term of a trade secret license to continue even after the subject of the license is no longer secret because of the benefit the licensee receives from a head start it enjoyed under the license.</p>
<p><b>4. Regulation of Price</b></p>	<p>It is <i>per se</i> illegal for a licensor of an intellectual property right in a product to fix a licensee's <i>resale</i> price of that product. However, there is some support for allowing an owner of a product patent to condition a license to manufacture the product on the fixing of the first sale price of the product, <u>United States v. General Electric</u>, 272 U.S. 476 (1926), but this exception has been construed narrowly by the courts. Today, the General Electric exception applies if all of the following is true:</p> <ul style="list-style-type: none"> <li>- the patentee sells the product in competition with the licensee;</li> <li>- the price relates to the patented product only, and to the entire product, not just a part of it;</li> <li>- the patentee establishes and enforces the price independent of the licensee; and</li> <li>- the product so priced is itself patented, rather than an unpatented product produced by a licensed process or machine.</li> </ul> <p>Minimum prices are illegal <i>per se</i> and maximum prices are evaluated under the <b>rule of reason</b> standard.</p>
<p><b>5. Limitation of Production</b></p>	<p>Restrictions on maximum output are generally evaluated under the <b>rule of reason</b> standard. However, output restrictions may serve the same purpose as price maintenance agreements and, therefore, require careful evaluation. Courts have limited the permissible restrictions on output by the licensee e.g. a licensor may not limit the production of unpatented goods by a licensee using a patented machine.</p>
<p><b>6. Tie-in Clauses</b></p>	<p>These are potentially permissible, however conditioning the ability of a licensee to license one or more items of intellectual property on the licensee's purchase of another item of intellectual property or a good or a service has been held in some cases to constitute illegal tying. Although tying arrangements may result in anti-competitive effects, such arrangements can also result in significant efficiencies and pro-competitive benefits. In the exercise of their prosecutorial discretion, the Agencies will consider both the anti-competitive effects and the efficiencies attributable to a tie-in. The Agencies would be likely to challenge a tying arrangement if: (i) the seller has market power in the tying product, (see above, Part A - 2); (ii) the arrangement has an adverse effect on competition in the relevant market for the tied product; and (iii) efficiency justifications for the arrangement do</p>

	not outweigh the anti-competitive effects.
<b>7. General Restrictions</b>	<p>(a) specified customers: Yes, subject to <b>rule of reason</b> analysis.</p> <p>(b) Customer groups: Yes, subject to <b>rule of reason</b> analysis.</p> <p>(c) Field of use: Yes, subject to <b>rule of reason</b> analysis.</p> <p>(d) Territory: Yes, subject to <b>rule of reason</b> analysis.</p> <p>Note: In each of the above situations if the license has the effect of dividing markets between competitors or potential competitors, it may be subject to antitrust scrutiny. This is particularly true in cross-licensing situations or when a market is dominated by a small group of competitors. Many restrictions in non-exclusive licenses are permissible under U.S. antitrust principles. In the case of exclusive licenses, these restrictions are evaluated case-by-case under the <b>rule of reason</b> and often upheld. Courts are divided about whether unpatented products manufactured using a patented process may be subjected to field of use restrictions.</p>
<b>8. Active/Passive Sales Restrictions</b>	Restraints on sales by one licensee into another licensee's territory are usually reviewed under the <b>rule of reason</b> and upheld, although some have been found illegal based on high market shares or the absence of any pro-competitive benefits from the restriction. Courts are also more likely to find a violation when the licensor operates a "dual-distribution" system [where both the licensee and the licensor are active in a market] and actually or potentially competes with the licensee.
<b>9. Restriction on exploitation of Licensee IP</b>	No. Such restrictions would be viewed under the principles articulated in the Intellectual Property Guidelines as suppressing innovation and, ultimately, output reducing, without off-setting pro-competitive benefits.
<b>10. Improvements</b>	<p>(a) an assignment of severable improvements:</p> <p>(b) an exclusive licence of severable improvements:</p> <p>(c) a non-exclusive licence of severable improvements:</p> <p>(d) an assignment or exclusive licence of non-severable improvements:</p> <p>In each of these instances, the restriction would be permissible, subject to a case-by-case analysis of competitive effects under the <b>rule of reason</b>.</p> <p>Grantbacks can have pro-competitive effects, especially if they are non-exclusive. Such arrangements provide a means for the licensee and the licensor to share risks and reward the licensor for making possible further innovation based on or informed by the licensed technology, and both promote innovation in the first place and promote the subsequent licensing of the results of the innovation. Grantbacks may adversely affect competition if they substantially reduce the licensee's incentives to engage in research and development, and thereby limit rivalry in innovation markets.</p>

	<p>A non-exclusive grantback may be necessary to ensure that the licensor is not prevented from effectively competing because it is denied access to improvements developed with the aid of its own technology. Compared with an exclusive grantback, a non-exclusive grantback, which leaves the licensee free to license improvements technology to others, is less likely to have anti-competitive effects.</p> <p>An important factor in the analysis of a grantback will be whether the licensor has market power in a relevant technology or innovation market. If it is determined that a particular grantback provision is likely to reduce significantly licensees' incentives to invest in improving the licensed technology, the extent to which the grantback provision has offsetting pro-competitive effects, such as (1) promoting dissemination of licensees' improvements to the licensed technology, (2) increasing the licensors' incentives to disseminate the licensed technology, or (3) otherwise increasing competition and output in a relevant technology or innovation market will be considered. The extent to which grantback provisions in the relevant markets generally increase licensors' incentives to innovate in the first place will also be considered</p>
11. <b>Challenge to IPR</b>	An agreement by a patent licensee not to challenge the validity of the licensed patent has been held to be void as a matter of public policy; however U.S. courts are divided as to whether a provision that terminates the license upon such challenge is enforceable. With respect to other forms of intellectual property, an agreement to terminate the license upon a challenge to the validity the intellectual property should in most cases be enforceable.
12. <b>Severability</b>	Generally, the anti-competitive restrictions can be severed, dependent on the nature of the anti-competitive provision and whether it goes to the heart of the contract. For commercial contracts, there are some types of provisions, e.g. Sherman Act violations, which will render the agreement totally unenforceable. Less offensive provisions may simply be rendered unenforceable with the remainder of the contract left intact.
<b><u>Part B - Distribution Agreements</u></b>	
1. <b>Legislation/Rules</b>	See above
2. <b>Regulation of Price</b>	<p>(a) recommended sales prices: Permitted, provided it does not constitute price fixing or acting in consent between supplier and reseller.</p> <p>(b) minimum sales prices: <b>Per se</b> prohibited.</p>

	(c) maximum sales prices: Permitted, subject to <b>rule of reason</b> analysis
<b>3. Restrictions</b>	(a) territories: Yes, subject to <b>rule of reason</b> analysis. (b) customers: Yes, subject to <b>rule of reason</b> analysis. (c) customer groups: Yes, subject to <b>rule of reason</b> analysis.
<b>4. Active/Passive Sales Restrictions</b>	Yes, generally.
<b>5. Non-compete provisions</b>	Yes, subject to evaluation of effect on competition. Largely, this analysis will turn on duration and geographic scope, and whether such a restriction is ancillary and reasonably related to effectuating the underlying license grant.
<b>6. Restrictions on competing products</b>	Yes, generally, although exceptions for certain specific types of products. Such restrictions may be subject to antitrust challenge if the manufacturer has market power in the product line.
<b>7. Severability</b>	See Part A - 12

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## Intellectual Property and Competition Law

### USA, Arkansas

Prepared by Lex Mundi member firm Rose Law Firm, a Professional Association

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See US Federal*  <u>Trade Mark Act</u>
2. <b>Market Shares</b>	See US Federal*
3. <b>Duration</b>	(a) & (b) See US Federal*
4. <b>Regulation of Price</b>	See US Federal*
5. <b>Limitation of Production</b>	See US Federal*
6. <b>Tie-in Clauses</b>	See US Federal*
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See US Federal*
8. <b>Active/Passive Sales Restrictions</b>	See US Federal*
9. <b>Restriction on exploitation of Licensee IP</b>	See US Federal*
10. <b>Improvements</b>	(a), (b), (c) & (d) - See US Federal*
11. <b>Challenge to IPR</b>	See US Federal*
12. <b>Severability</b>	See US Federal*
<b><u>Part B - Distribution</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions,</i>

<b><u>Agreements</u></b>	<i>which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>US Federal*</i>
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>US Federal*</i>
<b>3. Restrictions</b>	(a) (b) & (c) See <i>US Federal*</i>
<b>4. Active/Passive Sales Restrictions</b>	See <i>US Federal*</i>
<b>5. Non-compete provisions</b>	See <i>US Federal*</i>
<b>6. Restrictions on competing products</b>	See <i>US Federal*</i>
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, District of Colombia

Prepared by Lex Mundi member firm Steptoe & Johnson LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	<i>See US Federal*</i>
2. <b>Market Shares</b>	<i>See US Federal*</i>
3. <b>Duration</b>	<i>(a) &amp; (b) See US Federal*</i>
4. <b>Regulation of Price</b>	<i>See US Federal*</i>
5. <b>Limitation of Production</b>	<i>See US Federal*</i>
6. <b>Tie-in Clauses</b>	<i>See US Federal*</i>
7. <b>General Restrictions</b>	<i>(a), (b), (c) &amp; (d) - See US Federal*</i>
8. <b>Active/Passive Sales Restrictions</b>	<i>See US Federal*</i>
9. <b>Restriction on exploitation of Licensee IP</b>	<i>See US Federal*</i>
10. <b>Improvements</b>	<i>(a), (b), (c) &amp; (d) - See US Federal*</i>
11. <b>Challenge to IPR</b>	<i>See US Federal*</i>
12. <b>Severability</b>	<i>See US Federal*</i>
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>

1. <b>Legislation/Rules</b>	<i>See US Federal*</i>
2. <b>Regulation of Price</b>	<i>(a) (b) &amp; (c) See US Federal*</i>
3. <b>Restrictions</b>	<i>(a) (b) &amp; (c) See US Federal*</i>
4. <b>Active/Passive Sales Restrictions</b>	<i>See US Federal*</i>
5. <b>Non-compete provisions</b>	<i>See US Federal*</i>
6. <b>Restrictions on competing products</b>	<i>See US Federal*</i>
7. <b>Severability</b>	<i>See above, Part A - 12</i>

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## Intellectual Property and Competition Law

### USA, Indiana

Prepared by Lex Mundi member firm Baker & Daniels LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See US Federal*
2. <b>Market Shares</b>	See US Federal*
3. <b>Duration</b>	(a) & (b) See US Federal*
4. <b>Regulation of Price</b>	See US Federal*
5. <b>Limitation of Production</b>	See US Federal*
6. <b>Tie-in Clauses</b>	See US Federal*
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See US Federal*
8. <b>Active/Passive Sales Restrictions</b>	See US Federal*
9. <b>Restriction on exploitation of Licensee IP</b>	See US Federal*
10. <b>Improvements</b>	(a), (b), (c) & (d) - See US Federal*
11. <b>Challenge to IPR</b>	See US Federal*
12. <b>Severability</b>	See US Federal*
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>

1. <b>Legislation/Rules</b>	See <i>US Federal</i> *
2. <b>Regulation of Price</b>	(a) (b) & (c) See <i>US Federal</i> *
3. <b>Restrictions</b>	(a) (b) & (c) See <i>US Federal</i> *
4. <b>Active/Passive Sales Restrictions</b>	See <i>US Federal</i> *
5. <b>Non-compete provisions</b>	See <i>US Federal</i> *
6. <b>Restrictions on competing products</b>	See <i>US Federal</i> *
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, Maine

Prepared by Lex Mundi member firm Bernstein Shur

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See <i>US Federal*</i>
2. <b>Market Shares</b>	See <i>US Federal*</i>
3. <b>Duration</b>	(a) & (b) See <i>US Federal*</i>
4. <b>Regulation of Price</b>	See <i>US Federal*</i>  Facts and circumstances would be analysed on a case-by-case basis under state law using a <b>rule of reason</b> approach. Analysis would include market power, purpose of restriction and anti-competitive effect. After such consideration a restriction will be permissible if deemed reasonable.
5. <b>Limitation of Production</b>	See <i>US Federal*</i> and response to Part A - 4.
6. <b>Tie-in Clauses</b>	See <i>US Federal*</i> and response to Part A - 4.
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See <i>US Federal*</i> and response to Part A - 4.
8. <b>Active/Passive Sales Restrictions</b>	See <i>US Federal*</i> and response to Part A - 4.
9. <b>Restriction on exploitation of Licensee IP</b>	See <i>US Federal*</i> and response to Part A - 4.
10. <b>Improvements</b>	(a), (b), (c) & (d) - See <i>US Federal*</i> and response to Part A - 4.
11. <b>Challenge to IPR</b>	See <i>US Federal*</i> and response to Part A - 4.
12. <b>Severability</b>	See <i>US Federal*</i>  Under state law, in general if the agreement contains a severability clause

	the Courts will enforce that provision.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>US Federal*</i>
<b>2. Regulation of Price</b>	See <i>US Federal*</i>  (a) No restriction on recommending price.  (b) & (c) Enforcing a recommendation, or setting a maximum or minimum price would be analysed on a <b>rule of reason</b> approach.
<b>3. Restrictions</b>	(a) (b) & (c) See <i>US Federal*</i> and response to Part A - 4.
<b>4. Active/Passive Sales Restrictions</b>	See <i>US Federal*</i> and response to Part A - 4.
<b>5. Non-compete provisions</b>	See <i>US Federal*</i>  Yes, however enforceability will depend on analysis of various factors on a <b>rule of reason</b> approach, including but not limited to scope and duration of the provisions.
<b>6. Restrictions on competing products</b>	See <i>US Federal*</i> and response to Part A - 4.
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, Massachusetts

Prepared by Lex Mundi member firm Foley Hoag LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>US Federal*</i>  Massachusetts has adopted the <u>Uniform Commercial Code</u> .  Massachusetts antitrust law is substantively similar to Federal antitrust law.
<b>2. Market Shares</b>	See <i>US Federal*</i>
<b>3. Duration</b>	See <i>US Federal*</i>  (a) Generally understood that licenses terminate upon expiry of rights licensed.  (b) In Massachusetts, one can transfer “know-how” for a royalty stream even if the “know-how” is not secret. For example, a company could agree to train the personnel of another company in a given art for a flat fee, on a time and materials basis, or for a royalty based on the goods sold using the processes taught. Such an arrangement could constitute an antitrust violation if the licensee were subject to anti-competitive ancillary restraints or if the license constituted a subterfuge (e.g., a devise to divide markets among competitors). But the “maximum duration” of a know-how license cannot be analyzed outside of the context of market effects.
<b>4. Regulation of Price</b>	See <i>US Federal*</i>
<b>5. Limitation of Production</b>	See <i>US Federal*</i>
<b>6. Tie-in Clauses</b>	See <i>US Federal*</i>
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See <i>US Federal*</i>
<b>8. Active/Passive Sales Restrictions</b>	See <i>US Federal*</i>

9. Restriction on exploitation of Licensee IP	See <i>US Federal</i> *
10. Improvements	(a), (b), (c) & (d) - See <i>US Federal</i> *
11. Challenge to IPR	See <i>US Federal</i> *
	An agreement by a patent licensee not to challenge the validity of the licensed patent has been held to be void as a matter of public policy. With respect to other forms of intellectual property, an agreement to terminate the license upon a challenge to the validity the intellectual property should in most cases be enforceable.
12. Severability	Severability depends on the nature of the anti-competitive provision and whether it goes to the heart of the contract. In Massachusetts, a court generally has the power to reform a contract and will be more likely to do so if the contract has a "severability" provision that provides for reformation of illegal or unenforceable provisions.
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. Legislation/Rules	See <i>US Federal</i> *
2. Regulation of Price	(a) (b) & (c) See <i>US Federal</i> *
	A manufacturer can list Manufacturer's Suggested Resale Prices (MSRP). Generally, the setting of minimum resale prices is a <i>per se</i> violation of U.S. antitrust law. Under certain circumstances, setting maximum resale prices may be permissible.
3. Restrictions	(a) (b) & (c) See <i>US Federal</i> *
	Generally, yes.
4. Active/Passive Sales Restrictions	See <i>US Federal</i> *
	Generally, yes. Note: enforcement within the U.S. of territorial restrictions based on the residence of consumers is not practical.
5. Non-compete provisions	See <i>US Federal</i> *
	Yes, although the geographic scope and duration of such <b>non-compete</b> agreements must be "reasonable." Massachusetts courts will "blue pencil" such provisions (i.e. adjust them so that they are reasonable in scope and duration if found to be unreasonable); the party wishing to enforce a <b>non-compete</b> provision is advised to state explicitly that, if such a provision is

	unreasonable as to scope or duration, rather than excising the provision, the court should reform it to make it reasonable. (Whether a <b>non-compete</b> provision is “reasonable” is a fact-specific determination. The court will weigh the interests being protected (e.g., trade secrets, customer lists) against the benefits of free competition.)
<b>6. Restrictions on competing products</b>	See <i>US Federal</i> *  Generally, yes. Note: such restrictions are not permissible with respect to certain specific types of products (e.g., automobiles). Such restrictions may be subject to antitrust challenge if the manufacturer has market power in the product line.
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, New Jersey

Prepared by Lex Mundi member firm Day Pitney LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See <i>US Federal*</i>  <u>New Jersey Antitrust Act, N.J.S.A. 56:9-1, et seq.</u> The New Jersey Antitrust Act is modelled on the federal Sherman Act and contains an express provision requiring that it be construed consistently with comparable federal antitrust statutes. N.J.S.A. 56:9-18. Regulation of agreements concerning the license or transfer or intellectual property rights, as well as supply and distribution agreements, mirrors federal regulation of the same subject matter.
2. <b>Market Shares</b>	See <i>US Federal*</i>
3. <b>Duration</b>	(a) & (b) See <i>US Federal*</i>
4. <b>Regulation of Price</b>	See <i>US Federal*</i>
5. <b>Limitation of Production</b>	See <i>US Federal*</i>
6. <b>Tie-in Clauses</b>	See <i>US Federal*</i>
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See <i>US Federal*</i>
8. <b>Active/Passive Sales Restrictions</b>	See <i>US Federal*</i>
9. <b>Restriction on exploitation of Licensee IP</b>	See <i>US Federal*</i>
10. <b>Improvements</b>	(a), (b), (c) & (d) - See <i>US Federal*</i>
11. <b>Challenge to IPR</b>	See <i>US Federal*</i>

12. Severability	See US Federal*
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. Legislation/Rules	See US Federal*
2. Regulation of Price	(a) (b) & (c) See US Federal*
3. Restrictions	(a) (b) & (c) See US Federal*
4. Active/Passive Sales Restrictions	See US Federal*
5. Non-compete provisions	See US Federal*
6. Restrictions on competing products	See US Federal*
7. Severability	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, New Mexico

Prepared by Lex Mundi member firm Rodey, Dickason, Sloan, Akin & Robb, P.A.

<b>Part A - Technology Licenses</b>	*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.
1. <b>Legislation/Rules</b>	<p>New Mexico Statutes Annotated 1978 (NMSA 1978), Section 57-1-1 et seq., - the "Antitrust Act" - provides that "every contract, agreement, combination or conspiracy in restraint of trade or commerce, any part of which trade or commerce is within this state, is unlawful."</p> <p>New Mexico law is harmonized with federal antitrust law, and in the absence of New Mexico decisions directly on point for a particular situation, New Mexico courts look to federal cases involving allegations of antitrust arrangements under Section 1 of the Sherman Act. Section 57-1-15, NMSA 1978; <i>Smith Machinery Corp. v. Hesston, Inc.</i> 102 N.M. 245, 694 P.2d 501 (1985).</p> <p>The New Mexico Antitrust Act is not pre-empted by the federal Sherman Act.</p>
2. <b>Market Shares</b>	<p>No</p> <p>See <i>US Federal</i>*</p>
3. <b>Duration</b>	(a) & (b) - no New Mexico law directly on point. See <i>US Federal</i> *
4. <b>Regulation of Price</b>	No New Mexico law directly on point. See <i>US Federal</i> *
5. <b>Limitation of Production</b>	No New Mexico law directly on point. See <i>US Federal</i> *
6. <b>Tie-in Clauses</b>	<p>Yes, within limits. No illegal tying arrangement can exist unless the supplier of the tying product or service receives direct economic benefit from the sale of the tied product or service. <i>Leyba v. Renger</i>, 874 F.Supp. 1218 (D.N.M. 1994). To prevail on a <i>per se</i> tying claim, a plaintiff must prove the existence of a scheme involving two distinct products whereby a buyer must purchase a tied product in order to obtain the tying product, a seller possessing sufficient economic power in the tying product market to appreciably restrain competition in the tied product market, and an arrangement affecting a not insubstantial amount of commerce. <i>Smith Machinery Corp. v. Hesston, Inc.</i> 102 N.M. 245, 694 P.2d 501 (1985). Business justifications for a tying arrangement, as possible exceptions to application of the <i>per se</i> rule, will be narrowly construed. <i>Smith Machinery</i></p>

	<i>Corp. v. Hesston, Inc.</i> 102 N.M. 245, 694 P.2d 501 (1985).
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - "Vertical agreements" (such as those between a manufacturer and a distributor) are examined under a <b>rule of reason</b> standard. <i>Rogers v. Consolidated Distributors, Inc.</i> , 95 N.M. 467, 623 P.2d 587 (Ct. App. 1981). For example, the refusal of a distributor to sell a particular brand of television sets to a retailer or an agreement which would prevent a dealer from obtaining the brand would not, in itself, amount to an illegal restraint of trade, in the absence of a showing that it would result in, or was designed to promote, unlawful activity. <i>Rogers v. Consolidated Distributors, Inc.</i> , 95 N.M. 467, 623 P.2d 587 (Ct. App. 1981). "A ... seller may ... refuse to do business with any person or corporation unless such refusal would result in, or is designed to promote, unlawful activity." <i>Southwest Distributing v. Olympia Brewing</i> , 90 N.M. 502, 565 P.2d 1019 (1977). Therefore, restrictions may be lawful so long as they are not designed to promote or result in an unlawful activity.  See <i>US Federal</i> *
<b>8. Active/Passive Sales Restrictions</b>	No New Mexico law directly on point. See <i>US Federal</i> *
<b>9. Restriction on exploitation of Licensee IP</b>	No New Mexico law directly on point. See <i>US Federal</i> *
<b>10. Improvements</b>	(a), (b), (c) & (d) - No New Mexico law directly on point. See <i>US Federal</i> *
<b>11. Challenge to IPR</b>	No New Mexico law directly on point. See <i>US Federal</i> *
<b>12. Severability</b>	No provisions regarding severability are in the Antitrust Act. The language provides that such a contract is void. However, if the agreement contains a severability clause, it may be applied. See <i>City of Sunland Park, Santa Teresa Services Co., Inc. v. Macias</i> , 2003-NMCA-098, 134 N.M. 216, 75 P.3d 816 (Ct. App. 2003).
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>US Federal</i> *
<b>2. Regulation of Price</b>	(a) (b) & (c) Between distributors and retailers, prices can only be suggested, they cannot be binding. <i>Rogers v. Consolidated Distributors, Inc.</i> , 95 N.M. 467, 623 P.2d 587 (Ct. App. 1981).  See also <i>US Federal</i> *

3. <b>Restrictions</b>	(a) (b) & (c) No New Mexico law directly on point. See <i>US Federal*</i>
4. <b>Active/Passive Sales Restrictions</b>	No New Mexico law directly on point. See <i>US Federal*</i>
5. <b>Non-compete provisions</b>	Yes. <i>Bowen v. Carlsbad Ins. &amp; Real Estate, Inc.</i> , 104 N.M. 514, 724 P.2d 223 (1986).
6. <b>Restrictions on competing products</b>	No New Mexico law directly on point. See <i>US Federal*</i>
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, Ohio

Prepared by Lex Mundi member firm Calfee, Halter & Griswold LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See <i>US Federal*</i>  There are no unique or special provisions in Ohio state law on these issues.
2. <b>Market Shares</b>	See <i>US Federal*</i>
3. <b>Duration</b>	(a) & (b) See <i>US Federal*</i>
4. <b>Regulation of Price</b>	See <i>US Federal*</i>
5. <b>Limitation of Production</b>	See <i>US Federal*</i>
6. <b>Tie-in Clauses</b>	See <i>US Federal*</i>
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See <i>US Federal*</i>
8. <b>Active/Passive Sales Restrictions</b>	See <i>US Federal*</i>
9. <b>Restriction on exploitation of Licensee IP</b>	See <i>US Federal*</i>
10. <b>Improvements</b>	(a), (b), (c) & (d) - See <i>US Federal*</i>
11. <b>Challenge to IPR</b>	See <i>US Federal*</i>
12. <b>Severability</b>	See <i>US Federal*</i>
<b><u>Part B - Distribution</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions,</i>

<b><u>Agreements</u></b>	<i>which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>US Federal*</i>
<b>2. Regulation of Price</b>	(a) (b) & (c) See <i>US Federal*</i>
<b>3. Restrictions</b>	(a) (b) & (c) See <i>US Federal*</i>
<b>4. Active/Passive Sales Restrictions</b>	See <i>US Federal*</i>
<b>5. Non-compete provisions</b>	See <i>US Federal*</i>
<b>6. Restrictions on competing products</b>	See <i>US Federal*</i>
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, South Carolina

Prepared by Lex Mundi member firm Wyche, P.A.

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See US Federal*
2. <b>Market Shares</b>	See US Federal*
3. <b>Duration</b>	(a) & (b) See US Federal*
4. <b>Regulation of Price</b>	See US Federal*
5. <b>Limitation of Production</b>	See US Federal*
6. <b>Tie-in Clauses</b>	See US Federal*
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See US Federal*
8. <b>Active/Passive Sales Restrictions</b>	See US Federal*
9. <b>Restriction on exploitation of Licensee IP</b>	See US Federal*
10. <b>Improvements</b>	(a), (b), (c) & (d) - See US Federal*
11. <b>Challenge to IPR</b>	See US Federal*
12. <b>Severability</b>	See US Federal*
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>

1. <b>Legislation/Rules</b>	See <i>US Federal</i> *
2. <b>Regulation of Price</b>	(a) (b) & (c) See <i>US Federal</i> *
3. <b>Restrictions</b>	(a) (b) & (c) See <i>US Federal</i> *
4. <b>Active/Passive Sales Restrictions</b>	See <i>US Federal</i> *
5. <b>Non-compete provisions</b>	See <i>US Federal</i> *
6. <b>Restrictions on competing products</b>	See <i>US Federal</i> *
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, South Dakota

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<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
1. <b>Legislation/Rules</b>	See US Federal*
2. <b>Market Shares</b>	See US Federal*
3. <b>Duration</b>	(a) & (b) See US Federal*
4. <b>Regulation of Price</b>	See US Federal*
5. <b>Limitation of Production</b>	See US Federal*
6. <b>Tie-in Clauses</b>	See US Federal*
7. <b>General Restrictions</b>	(a), (b), (c) & (d) - See US Federal*
8. <b>Active/Passive Sales Restrictions</b>	See US Federal*
9. <b>Restriction on exploitation of Licensee IP</b>	See US Federal*
10. <b>Improvements</b>	(a), (b), (c) & (d) - See US Federal*
11. <b>Challenge to IPR</b>	See US Federal*
12. <b>Severability</b>	See US Federal*
<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>

1. <b>Legislation/Rules</b>	See <i>US Federal</i> *
2. <b>Regulation of Price</b>	(a) (b) & (c) See <i>US Federal</i> *
3. <b>Restrictions</b>	(a) (b) & (c) See <i>US Federal</i> *
4. <b>Active/Passive Sales Restrictions</b>	See <i>US Federal</i> *
5. <b>Non-compete provisions</b>	See <i>US Federal</i> *
6. <b>Restrictions on competing products</b>	See <i>US Federal</i> *
7. <b>Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, Virginia

Prepared by Lex Mundi member firm McGuireWoods LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	No specific Virginia state legislation  <i>See US Federal*</i>
<b>2. Market Shares</b>	N/A  <i>See US Federal*</i>
<b>3. Duration</b>	(a) & (b) None. <i>See US Federal*</i>
<b>4. Regulation of Price</b>	No specific Virginia state law. <i>See US Federal*</i>
<b>5. Limitation of Production</b>	No specific Virginia state law. <i>See US Federal*</i>
<b>6. Tie-in Clauses</b>	No specific Virginia state law. <i>See US Federal*</i>
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - No specific Virginia state law. <i>See US Federal*</i>
<b>8. Active/Passive Sales Restrictions</b>	No specific Virginia state law. <i>See US Federal*</i>
<b>9. Restriction on exploitation of Licensee IP</b>	No specific Virginia state law. <i>See US Federal*</i>
<b>10. Improvements</b>	(a), (b), (c) & (d) - No specific Virginia state law.  <i>See US Federal*</i>
<b>11. Challenge to IPR</b>	No specific Virginia state law.  <i>See US Federal*</i>
<b>12. Severability</b>	Virginia follows US federal law. <i>See US Federal*</i>

<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See <i>US Federal*</i>
<b>2. Regulation of Price</b>	(a) (b) & (c) No specific Virginia state law. See <i>US Federal*</i>
<b>3. Restrictions</b>	(a) (b) & (c) No specific Virginia state law. See <i>US Federal*</i>
<b>4. Active/Passive Sales Restrictions</b>	No specific Virginia state law. See <i>US Federal*</i>
<b>5. Non-compete provisions</b>	No specific Virginia state law. See <i>US Federal*</i>
<b>6. Restrictions on competing products</b>	No specific Virginia state law. See <i>US Federal*</i>
<b>7. Severability</b>	See above, Part A - 12

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## Intellectual Property and Competition Law

### USA, Wisconsin

Prepared by Lex Mundi member firm Michael Best & Friedrich LLP

<b><u>Part A - Technology Licenses</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	<b>See US Federal*</b>  Legislation of the State of Wisconsin (Chapter 133) tracks the US Federal anti-trust and unfair competition laws.
<b>2. Market Shares</b>	See US Federal*
<b>3. Duration</b>	(a) & (b) None specifically. See US Federal*
<b>4. Regulation of Price</b>	See US Federal*
<b>5. Limitation of Production</b>	See US Federal*
<b>6. Tie-in Clauses</b>	See US Federal*
<b>7. General Restrictions</b>	(a), (b), (c) & (d) - See US Federal*
<b>8. Active/Passive Sales Restrictions</b>	See US Federal*
<b>9. Restriction on exploitation of Licensee IP</b>	See US Federal*
<b>10. Improvements</b>	(a), (b), (c) & (d) - See US Federal*
<b>11. Challenge to IPR</b>	See US Federal*
<b>12. Severability</b>	For commercial contracts, there are some types of provisions (e.g. Sherman Act violations) that will render the agreement totally unenforceable. Less offensive provisions may simply be rendered unenforceable with the remainder of the contract left intact.

<b><u>Part B - Distribution Agreements</u></b>	<i>*Much of the law in this area is founded on Federal Statute. Please see the US Federal results for more detailed information on the Federal provisions, which impact on the responses for this jurisdiction.</i>
<b>1. Legislation/Rules</b>	See US Federal*
<b>2. Regulation of Price</b>	(a) (b) & (c) See US Federal*
<b>3. Restrictions</b>	(a) (b) & (c) See US Federal*
<b>4. Active/Passive Sales Restrictions</b>	See US Federal*
<b>5. Non-compete provisions</b>	See US Federal*
<b>6. Restrictions on competing products</b>	See US Federal*
<b>7. Severability</b>	See above, Part A - 12

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## Glossary

<b>active sales</b>	sales in circumstances where a direct approach has been made by a seller to customers in order to elicit sales.
<b>block exemption</b>	a regulation specifying the conditions under which certain types of agreements are exempted from the prohibition of restrictive agreements laid down in primary legislation. When an agreement fulfills the conditions set out in a block exemption regulation it will not be deemed anti-competitive and thus the agreement is automatically valid and enforceable.
<b>de minimis (EU)</b>	level below which the effect on competition is deemed insignificant and therefore will not be subject to the censure of the competition authorities.
<b>erga omnes</b>	literally <i>toward all</i> ; against the whole of the world.
<b>Excluded restrictions (EU)</b>	anti-competitive restraints, which require individual assessment of their anti-competitive and pro-competitive effects; Excluded restrictions may be severed from an agreement.
<b>Hard core restrictions (EU)</b>	severely anti-competitive restraints, which are deemed restrictive of competition by their very object; an agreement containing such will be void.
<b>inter partes</b>	<i>between the parties</i> . Rights or restrictions may be found invalid against a particular party, but would remain valid against any other person; the right would be invalid <i>inter partes</i> only.
<b>non-compete obligation</b>	any direct or indirect obligation causing a licensee/distributor not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on a distributor to purchase from the supplier or from another undertaking designated by the supplier more than 80% (percentage can vary from jurisdiction to jurisdiction) of a distributor's total purchases of the contract goods or services and their substitutes on the relevant market
<b>non-reciprocal agreement</b>	an agreement where only one of the parties is licensing its technology to the other party or where in case of cross-licensing the licensed technologies are not competing technologies and cannot be used for the production of competing products.
<b>passive sales</b>	sales in circumstances where the initial approach to purchase products have been made by a customer to a seller.

<b><i>per se</i> [anti-competitive]</b>	in some jurisdictions the legislature/courts have concluded a particular restraint is so plainly anti-competitive that it should be treated as unlawful <i>per se</i> , without any further inquiry into the restraint's likely competitive effect.
<b>reciprocal agreement</b>	where two undertakings grant each other licences that concern competing technologies or can be used for the production of competing technologies.
<b>rule of reason</b>	individual assessment by application of some form of balancing of the pro-competitive and anti-competitive effects.
<b>safety zone / safe harbour</b>	a defined (by maximum size/market power) category of undertakings for which potentially anti-competitive activities will ordinarily not be challenged.
<b>selective distribution system (EU)</b>	a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorized distributors.