



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission adopts revised competition regime for technology transfer agreements

The European Commission has adopted new rules for the assessment of technology transfer agreements under EU antitrust rules. The purpose of such agreements is to enable companies to license the use of patents, know-how or software held by another company for the production of goods and services. The revised rules facilitate such sharing of intellectual property, including through patent pools, and provide clearer guidance on licensing agreements that stimulate competition. At the same time they aim to strengthen incentives for research and innovation. See also [MEMO/14/208](#)

Licensing helps to spread innovation and allows companies to offer new products and services. It also strengthens incentives for research and development by creating additional revenue streams to recoup costs. Licensing therefore plays an important part in economic growth and consumer welfare. However, it can also be used to harm competition, for instance if two competitors in a licensing agreement divide markets between them instead of competing with each other. Another example would be a licensing agreement that excludes the use of competing technologies in the market. These and other anticompetitive agreements are prohibited by Article 101 of the Treaty on the Functioning of the European Union (TFEU).

The regime adopted today provides better guidance to firms on how to license in ways that stimulate innovation and preserve a level playing field in the Single Market. It consists of the Technology Transfer Block Exemption Regulation (TTBER), which exempts certain licensing agreements from antitrust rules, and the Technology Transfer Guidelines, which provide further guidance on the application of the rules.

The main features of the new rules are the following:

- The revised regime continues to reflect that **licensing is in most cases pro-competitive**. The Commission has made incremental improvements to the current regime, which overall received positive feedback from stakeholders in the two public consultations.
- **New guidance on "patent pools"**: Patent pools can give companies cheaper and easier access to necessary intellectual property rights, such as standard essential patents, by establishing a one-stop-shop. Recognising the often pro-competitive nature of patent pools, the creation of and licensing from patent pools now benefits from a safe harbour in the Guidelines.
- **A more prudent approach on clauses that could harm competition and innovation**: Certain types of clauses are no longer automatically exempted from antitrust rules but have to be assessed case-by-case. These are clauses which allow the licensor to terminate a non-exclusive agreement if the licensee challenges the validity of the intellectual property rights, and clauses that force a licensee to license any improvements it makes to the licensed technology to the licensor on an exclusive basis.

- The Guidelines also give guidance on **settlement agreements** in light of the Commission's recent experience.

The adopted texts can be found at:

http://ec.europa.eu/competition/antitrust/legislation/transfer.html#TTBER_and_guidelines

Background

The regime consists of two instruments. First, the Technology Transfer Block Exemption Regulation (TTBER) creates a safe harbour for licensing agreements concluded between companies that have limited market power and that respect certain conditions set out in the TTBER. Such agreements are deemed to have no anticompetitive effect or, if they do, the positive effects outweigh the negative ones. Second, the Technology Transfer Guidelines provide guidance on the application of the TTBER as well as on the application of EU competition law to technology transfer agreements that fall outside the safe harbour of the TTBER.

In December 2011, the Commission launched a first public consultation on the current regime (see [MEX/11/1206](#)). Replies, mainly from law firms, law and industry associations, but also from several companies and citizens, are available [here](#). A majority considered that the present system is useful and an important tool for the industry. Many respondents made suggestions for incremental improvements, in light of which the Commission proposed a revised draft in early 2013 for consultation (see [MEMO/13/120](#)). The replies welcomed the Commission's proposal to keep the overall structure of the regime as well as the clarifications concerning the scope. On substance, most of the submissions focused on the proposed changes concerning market share thresholds, termination clauses, exclusive grant-back obligations and patent pools. They are available [here](#).

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