

REVIEW OF THE CURRENT REGIME FOR THE ASSESSMENT OF TECHNOLOGY TRANSFER AGREEMENTS

Questionnaire for stakeholders

Explanatory remarks

In April 2004, the Commission adopted Regulation (EC) No 772/2004 on the application of Article 81(3) of the Treaty [now Article 101(3) TFEU] to categories of technology transfer agreements, and Guidelines on the applicability of Article 81 of the Treaty to technology transfer agreements. These instruments will expire on 30 April 2014.

In order to prepare the regime to be applied after that date and to ensure that it both reflects current market realities and provides for the possibility of non-competitors and competitors to enter into technology transfer agreements where it contributes to economic welfare without posing a risk for competition, the Commission invites stakeholders to present their views on their experiences in applying the BER and the accompanying Guidelines in practice. Receiving feedback from stakeholders is a key element of this review. The Commission welcomes comments from the business community and their representatives as well as other stakeholders including industry associations and consumer interest associations who have had direct experience of the application of the current regime for the assessment of technology transfer agreements.

Replies to this questionnaire should be sent to the Commission by no later than 03.02.2012. In your response, please indicate clearly your identity and that of any interest you represent. Please also specify whether you are, or are representing, a company, business association, consumer interest organisation, public authority, law firm, academic institution, private individual or some other entity. Received contributions will be published on the Internet. However, submissions that are clearly marked "confidential" will be treated as such. In that case, you should additionally provide a non-confidential version of your reply.

Responses should be addressed to the Commission at:

*European Commission
DG Competition
Antitrust Registry
B-1049 BRUSSELS*

or by email to comp-greffe-antitrust@ec.europa.eu

specifying the reference "HT.2742 – stakeholder input"

QUESTIONNAIRE

The Block Exemption Regulation on technology transfer agreements deals with technology transfer agreements both between competitors and non-competitors (in other words it covers both horizontal and vertical agreements regarding technology transfer). It covers only bilateral agreements.

The Guidelines on technology transfer agreements cover both bilateral as well as multiparty licensing agreements (such as patent pools). It explains in further depth the articles and concepts in the Block Exemption Regulation but also gives guidance on how to assess agreements which do not fulfil the criteria set out in the Block Exemption Regulation (for example if the parties to the agreement have a (joint) market share exceeding the relevant market share threshold).

The purpose of this questionnaire is to get stakeholder input on how the existing Regulation and Guidelines have worked in practice and what improvements are possible. All input is welcome and you are neither obliged to answer all questions or to follow this format.

1. Is your company primarily a **licensor or licensee** of technology? In which sector(s) or broad product groups?
2. Do you, overall, consider that the Block Exemption Regulation and the Guidelines **have proven to be a well-functioning system** for assessing technology transfer agreements?
3. Can you give an **indication of the impact** (positive and negative) of the current competition rules on the business of your company? What would be the impact on your business if there were no Block Exemption Regulation and Guidelines?
4. Please report **any problems raised by the application** of the Block Exemption Regulation and/or the Guidelines. Please indicate also the sector/broad product group(s) in which such problems were encountered and the type of solution found, if any, to address the problems and results obtained.
5. Do you have any suggestions as to how one could clarify **either the concepts or terminology** used in the two instruments?
6. According to your experience, do you consider that some of the provisions in the current Block Exemption Regulation and/or parts of the text of the Guidelines have become **unsatisfactory or need to be updated due to developments** (in particular developments after 2004 when the current system was put in place) that have taken place at the national and European level either generally or in a particular industry? Please provide reasons for your response.
7. Do you believe that there are **any specific competition "issues" related to technology transfer agreements not currently addressed** by the current Block Exemption Regulation or Guidelines and that should be considered in the review? For example should the scope of the Block Exemption Regulation and/or the Guidelines cover other types of production

related agreements such as agreements, where trade-marks are licensed for display on consumer goods but there is no licensed technology? In addition, are there new contractual arrangements or clauses in technology transfer agreements which could have an impact on competition and which are not explicitly dealt with in the Block Exemption Regulation and/or the Guidelines? Please provide reasons for your response.

8. Have you been involved in **litigation** and/or **competition investigations** concerning the Block Exemption Regulation and/or the Guidelines? Or are you aware of national cases and/or arbitration awards that could be relevant for the Commission's review. Please specify.
9. Do you consider that there is **a need to keep a Block Exemption Regulation in this field** or would it be enough to merely give guidance (including relevant safe-harbours) in the Guidelines?
10. Do you have any particular **comments on the list of hardcore restrictions** in Article 4 and/or the **list of excluded restrictions** in Article 5 of the Block Exemption Regulation? In particular, should the lists include also other type of restrictions or should, on the contrary, certain restrictions be removed from them? We would welcome comments as to whether you consider the balance right as regards the Commission's policy toward territorial restrictions, field of use restrictions and possibilities of exclusive and non-exclusive grant-backs.
11. Have you encountered practical difficulties in **calculating the relevant market shares** for the purpose of applying the Block Exemption Regulation (c.f. Article 3(3))? If so, how could this situation be improved?
12. The Commission has recently commissioned a study on competition law and patent law, available at the webpage of this consultation:
http://ec.europa.eu/competition/consultations/2012_technology_transfer/index_en.html.

Do you have any comments on this study? We would particularly welcome comments on the specific issues of cross-licensing, patent pools and grant-backs respectively, which are addressed in the study.
13. Any other observations or suggestions for improvement of competition policy in this area?