

Die Beurteilung von Technologietransfervereinbarungen anhand des neuen chinesischen Kartellgesetzes

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Kartellgesetz

- Art. 55:

„This Law is not applicable to operators' conduct in exercise of intellectual property rights pursuant to provisions of laws and administrative regulations relating to intellectual property rights; but this Law is applicable to operators' conduct that eliminates or restricts competition by abusing their intellectual property rights.“



Kartellgesetz

- Art. 13:

„The following Monopoly Agreements among operators with competing relationships shall be prohibited:

[...]

(4) Restrict the purchase of new technology or new equipment, or restricts the development of new technology or new products;“



Kartellgesetz

- Art. 15:

„Monopoly Agreements between operators that can be proven to fall under any of the following cases shall be exempt from the application of Article 13 and Article 14:

(1) For the purpose of technology improvement, or research and development of new products;“



Kartellgesetz

- Art. 17:

„Operators holding a dominant market position are prohibited from engaging in the following activities by abusing their dominant position:

[...]

(3) Refusing to enter into transactions with their counter-parties without any justification.“



Vertragsgesetz

- Art. 343

„A technology transfer contract may set forth the scope of exploitation of the patent or the use of the technical secret by the transferor and the transferee, provided that it may not restrict technological competition and technological development.“

- Art. 4 Abs. 1 lit. c) Nr. (ii) GVO TT



Vertragsgesetz

- Art. 344:

„A patent licensing contract is only valid during the term of the patent. Where the term of the patent expires or the patent is invalidated, the patentee may not enter into a patent licensing contract with any person in respect thereof.“

- Art. 2 Abs. 2 GVO TT



Vertragsgesetz

- Art. 346:

„The transferee under a patent licensing contract shall exploit the patent in accordance with the contract and may not license the patent to any third person except as provided in the contract; and shall pay the licensing fee in accordance with the contract.“

- Rdnr. 155 der Leitlinien



Verordnung über den Import und Export von Technologie

- Article 29:

“A technology import contract may not contain any of the following restrictive clauses:

1. requiring the licensee to accept attached conditions that are not absolutely necessary for the import of the technology, including the purchase of technology, raw materials, products, equipment or services that are not necessary;”

- Rdnr. 191 ff. der Leitlinien /Art. 2 Abs. 1 Nr. 5 VO 240/96



Verordnung über den Import und Export von Technologie

- “2. requiring the licensee to pay royalties or to undertake relevant obligations for the technology when the valid term of the patent has already expired or the patent has been declared to be invalid;”
- Art. 2 Abs. 2 GVO TT



Verordnung über den Import und Export von Technologie

- “3. restricting the licensee from making improvements to the technology provided by the licensor or restricting the licensee from using improved technology;”
- Art. 5 Abs. 1 lit. a) und b) GVO TT



Verordnung über den Import und Export von Technologie

- “4. restricting the licensee from acquiring from other sources technology similar to, or competitive with, the technology provided by the licensor;”

- Art. 5 Abs. 2 GVO TT



Verordnung über den Import und Export von Technologie

- “5. unreasonably restricting the channels or sources from which the licensee buys raw materials, parts and components, products or equipment;”
- Rdnr. 191 ff. der Leitlinien /Art. 2 Abs. 1 Nr. 5 VO 240/96



Verordnung über den Import und Export von Technologie

- “6. unreasonably restricting the quantity, type or sales price of the products manufactured by the licensee; or”
- Art. 4 Abs. 1 lit. a) und b) / Art. 4 Abs. 2 lit. a) GVO TT



Verordnung über den Import und Export von Technologie

- “7. unreasonably restricting the export channels of the products manufactured by the licensee with the imported technology.”



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