

European Commission consultation on Technology Transfer Block Exemption Regulation (TTBER)

Introduction

The IP Federation represents IP intensive companies in the United Kingdom, all of whom are involved in technology transfer of various kinds - a list of members is attached. Note our members are concerned with both licensing in and licensing out of technology, in a wide range of sector and product groups. Our member companies are extensively involved with IP in Europe and internationally. Not only do our companies own considerable numbers of IP rights, both in Europe and elsewhere, but they are affected by the activities and IP rights of competitors.

The European Commission has recently launched a public [consultation](#) in regard to the functioning of the current Technology Transfer Block Exemption Regulation ([TTBER](#)) and Guidelines, scheduled to expire on 30 April 2026. The closing date of the public consultation is 24 July 2023.

IP Federation comments

Drawing on our members' wide practical experience, we find that technology transfer arrangements are generally procompetitive. Encouraging transfer of technology by licence, even with some restrictions as to how the IP is used, can increase competition. Cross-licensing and grant backs are fundamental to commerce in this area, and current arrangements we find work reasonably well in the vast majority of cases.

Against this backdrop, the IP Federation believes that the Technology Transfer Block Exemption Regulation and Guidelines remain essential to a well-functioning system. We maintain that this provides a degree of business certainty and a valuable legal framework in which to conduct business, that would otherwise not exist. For this reason, we would urge caution before any possible changes are seriously considered or made to the Regulation which would undermine established business practice. Please also see our previous policy paper submissions in support, in this area: [PP 5/12](#) and [PP 5/13](#), as attached. Any further changes to the Regulation should therefore only be seriously considered or made, if properly supported by consultation with business, impact assessments and evidence adduced.

Possible changes

Providing legal certainty, as noted already, is a great advantage to business when entering into licensing arrangements. This positive impact of the current system is however still hampered, we believe, by the current Market Share test. The difficulty in establishing the market in question and whether the parties to a potential agreement are competitors undermines any legal certainty. A Technology Market (as compared to Product Market) is difficult

to ascertain in practice and subsequently, it is difficult to establish the Market Share of the parties. Establishing if parties are competitors is fundamental to applying the Regulation correctly due to the differences in Hardcore Restrictions in Article 4. The Market Share test thus remains a problem in practical application of the regime, especially when applied to Technology Markets as compared to Product Markets. Certainty is also potentially undermined by the ability for an agreement when signed to be fully compliant with the Regulation but at a later date (i.e. beyond the current 2 year transition period, see Article 8.(e)) due to changes in Market Share to fall outside the safe harbour created by the Regulation.

Conclusion

As indicated above, the IP Federation remains broadly in favour of the Block Exemption Regulation and Guidelines as they stand. Providing legal certainty is a great advantage to business when entering into licensing arrangements. Certain aspects of it, in particular the Market Share test, could usefully be reviewed. Even so, we would urge caution before any changes are seriously considered or made to the Regulation which would undermine established business practice.

The Federation welcomes the public consultation and this opportunity to respond. We look forward to the outcome of the consultation. Our members would be pleased to assist further, and to be involved in future stakeholder workshops/discussions in this area.

IP Federation
24 July 2023



IP Federation members 2023

The IP Federation membership comprises the companies listed below. The UK Confederation of British Industry (CBI), although not a member, is represented on the IP Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. The IP Federation is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

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Microsoft Limited
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Ocado Group plc
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