



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2013)

**Opinion**

**Title**                    **DG COMP – Impact Assessment on the Technology Transfer Block Exemption Regulation and Guidelines on the application of art.101 TFEU to technology transfer agreements**

(draft version of 23 October 2013)\*

**(A) Context**

Technology transfer agreements are agreements by which one party (licensor) authorises another (licensee) to use its technology for the production of goods and services. Efficiency enhancing technology transfer agreements between competitors or non-competitors can stimulate innovation and competitiveness by promoting dissemination of technologies to other companies than the original inventor. This strengthens competition and can stimulate follow-on innovation. Competition is a key tool to incentivise companies to innovate and to co-operate in efficiency enhancing projects. Effective competition law enforcement requires policy instruments - in particular those that have significant impact on technology transfer agreements - that keep up with market developments. The current review of the rules applicable to technology transfer agreements should help to ensure that the Commission's policy reflects current market realities, provides effective incentives for competitors and non-competitors to enter into technology transfer agreements and helps to assure that the licensing agreements contribute to economic welfare without, at the same time, distorting competition. This impact assessment report supports both the draft Technology Transfer Block Exemption Regulation (TTBER) and the draft Guidelines.

**(B) Overall opinion: POSITIVE**

**The report should be improved in a number of respects. First, it should strengthen the clarity of the problem definition by summarising the main problems to be addressed, and by providing more background on the international aspects (e.g the relative importance of technology transfer agreements involving non-EU partners, effects on international trade and investment). Second, the report should set objectives that address the key problems identified in more concrete terms, and consider including a separate objective to reduce compliance costs. Third, it should better assess the impacts on the various affected parties, and discuss the effects on competitiveness, compliance costs, on international trade and investment relations and on employment in greater depth. Finally the report should give a better overview throughout the report of the input received from different categories of stakeholders, and develop the foreseen evaluation arrangements.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**In written communication with the Board DG COMP accepted to amend the report along the lines of these recommendations.**

**(C) Main recommendations for improvements**

**(1) Bring out the key problems more clearly.** The report should conclude the elaborate description of the three key problem areas (grant-backs, termination clauses and patent pools) with a brief summary of the concrete problems to be addressed. It should indicate how these problems would affect different stakeholder groups under a baseline scenario in which the current TTBER and Guidelines are retained without modification. In this context, it should also evaluate recent practical experiences with “self-assessments”. It should also briefly describe the consequences of allowing the technology transfer rules to expire without introducing new ones. The report should present the conclusions from the comparison of legal provisions concerning technology transfer agreements in the EU, US and Japan, and the relevant elements in the TRIPS agreement in a short sub-section of the problem definition. This should also allow the report to address how important the international context of the competition effects of technology transfer agreements is in practice (i.e. how important is the share of technology transfer agreements that involve both EU-based and non-EU partners, and how does the relevant competition regime affect international trade and investment).

**(2) Formulate the objectives in more concrete terms.** The report should improve the coherence of its intervention logic by revising the specific objectives to ensure that they more closely address the practical problems identified (and summarised in more concrete terms) in the problem section. It should consider including an explicit objective to minimise compliance costs for the affected businesses, especially for SMEs. With regard to the coherence with other EU policy objectives the report should briefly explain how in this context EU policies on international trade and investment and competition policy provide complementary instruments to promoting economic efficiency, development and growth.

**(3) Better assess and compare options.** The report should explain in more specific terms how the impacts of the different options are distributed over different affected categories of actors (licensors/licensees, small/big firms, national competition authorities), instead of aggregating all impacts. The effects on competitiveness, compliance costs (especially the costs of self-assessment), on international trade and investment relations and on employment should be discussed in greater depth. More clarity should be provided on the criteria for the assessments with "+" or "-" in the impact tables in chapter 5.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

**(D) Procedure and presentation**

The report should better present the views of specific stakeholder groups, especially regarding the options, and where this is unclear, for example because the same actors can simultaneously be licensors and licensees, it should explain why. The description of planned evaluations for future reviews should indicate more concretely how the evidence base necessary for a full ex post evaluation of the amended framework will be established. Certain technical terms and acronyms should be explained in a glossary.

<b>(E) IAB scrutiny process</b>	
Reference number	2013/COMP/009
External expertise used	No
Date of IAB meeting	Written procedure