EUROPEAN COMMISSION - PRESS RELEASE

Antitrust: Commission consults on review of current regime for technology transfer agreements

Brussels, 06 December 2011 - The European Commission invites comments on the application of EU antitrust rules for the assessment of technology transfer agreements, i.e. patent, know-how and software licensing. The current regime consists of a block exemption regulation ("TTBER"), that creates a safe harbour for certain non problematic agreements, and guidelines on the application of the TTBER as well as on the assessment of agreements that fall outside the TTBER. The regime has the aim to strengthen the incentives for research and innovation, facilitate the diffusion of intellectual property and stimulate competition. The current TTBER, which entered into force in May 2004, will expire in April 2014. In light of stakeholders' submissions, the Commission will make a proposal on how to assess technology transfer agreements after the expiry of the current TTBER in April 2014.

Licensing is vital for economic development and consumer welfare as it helps to disseminate innovations and allows companies to integrate and use complementary technologies. However, licensing agreements can also have a stifling effect on competition. For instance, two competitors could use a license agreement to divide markets between them or an important licensor could exclude competing technologies from the market through conditions in its licensing agreements. How intellectual property right holders license their rights to other market participants is crucial for achieving the right balance between stimulating innovation and preserving a level playing field in the internal market.

The TTBER determines how EU rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty on the functioning of the European Union (TFEU)) apply to technology transfer agreements. It covers agreements where a licensor permits a licensee to exploit the licensed technology for the production of goods and services. The TTBER exempts certain agreements that are considered to be non-problematic for competition, from scrutiny under Article 101. To qualify for an exemption, agreements need (i) to produce positive effects which outweigh the restrictions inherent in the agreement and (ii) be concluded either between rivals who have less than 20% market share or between non-competitors who have less than 30% market share. The TTBER also defines certain hardcore restrictions, which never qualify for an exemption, such as fixing of prices charged to third parties. It is accompanied by a set of guidelines on the interpretation of the TTBER and on the application of Article 101 to agreements that fall outside the TTBER, for instance because the market share threshold is exceeded.

With a view to ensuring that the future regime both reflects current market realities and facilitates the conclusion of technology transfer agreements that contribute to economic welfare without posing a risk for competition, the Commission invites feedback from stakeholders who have a direct experience of the application of the current regime.

For that purpose, the Commission has published a questionnaire as a first step in the review process. In light of the submissions and after further consultation, the Commission will consider whether the current regime should be maintained, modifying or abolished. Replies to the questionnaires can be submitted until 3 February 2012.

The questionnaire is available at:
http://ec.europa.eu/competition/consultations/2012_technology_transfer/index_en.html

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