



INTERNATIONAL BAR ASSOCIATION

**ANTITRUST SECTION UNILATERAL CONDUCT AND BEHAVIOURAL ISSUES
WORKING GROUP**

**COMMENTS ON THE PROPOSED REVISIONS OF THE
TECHNOLOGY TRANSFER BLOCK EXEMPTION REGULATION
AND THE TECHNOLOGY TRANSFER GUIDELINES**

29 October 2025

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FEEDBACK ON THE PUBLIC CONSULTATION

I. INTRODUCTION

1. The Committee of the International Bar Association's ("IBA") Antitrust Section would like to thank the European Commission ("Commission" or "EC") for the opportunity to provide comments on the proposed revisions of the Technology Transfer Block Exemption Regulation and the Technology Transfer Guidelines ("TTBER" and "TTGs" respectively).
2. The Unilateral Conduct and Behavioural Issues Working Group ("**Working Group**") offers these submissions for the Commission's consideration as it finalizes the Guidelines.

II. ABOUT THE IBA

3. The IBA is the world's leading international organisation of legal practitioners, bar associations, and law societies. As the "global voice of the legal profession", the IBA contributes to the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 80,000 individual lawyers from over 170 countries, and it has considerable expertise in assisting the global legal community.
4. The Antitrust Section includes competition law practitioners with a wide range of jurisdictional backgrounds and professional experience, including unilateral conduct. Such varied experience places it in a unique position to provide a comparative analysis for the development of competition laws, including through submissions developed by its working groups on various aspects of competition law and policy.
5. The Working Group is responsible for monitoring and commenting on a range of competition issues that arise, inter alia, from unilateral conduct and abuse of dominance or misuse of market power as well as cooperative/horizontal (non-cartel) and vertical agreements. It aims to encourage best practice in the ongoing development of international laws in these areas by commenting on consultations on proposed new and reformed legislation

III. OUR OBSERVATIONS

6. We refer to our previous submission, provided on 25 April 2025, which provided a detailed response to the initial call for evidence for an impact assessment in regard to the proposed revision of the TTBER and TTGs. We do not propose to restate the observations made in that submission but to provide some limited consequential observations on the draft guidance.
7. First, as an important matter of principle, the Group welcomes all efforts by the European Commission and other regulators to further specify the circumstances in which agreements will be considered pro-competitive or competitively neutral. Clear and unambiguous guidance on these matters is a cornerstone of the EU's self-assessment regime, which should always seek to ensure that agreements not giving rise to serious competition concerns be enabled to progress in a timely fashion.
8. The Group also welcomes efforts by the Commission to be cautious and incremental in making any changes to the TTBER and TTGs. This greatly assists business and stakeholders by ensuring that businesses already operating (often highly complex) arrangements that have been adjudged to be compatible with the existing TTBER do not have to unnecessarily undergo a lengthy re-examination of their arrangements, unless otherwise advised. It is not necessary for the Commission to attempt to anticipate future eventualities or possibilities in regard to the development and use of technology; in particular, where novel issues arise, the Commission can and should make use of the informal guidance procedure (and wherever possible publish such guidance) to address novel issues.¹ Attempts to be overly prescriptive in guidance run the risk of increasing uncertainty and potentially chilling innovation.
9. In regard to the proposed changes to the market share thresholds, the Group welcomes the proposed extension to the grace period for agreements between companies whose market shares exceed the safe harbour threshold. The Group also welcomes important clarifications, including that greenfield joint ventures and technologies that have yet to be brought to market will fall within the safe harbour.
10. However, the Group considers that the proposal to retain the requirement for the thresholds for both the technology and product markets must be met for an agreement to fall under the safe harbour may overly hinder qualifying for exemption. In this respect, and for the reasons set out in the Group's previous submission, we consider that the European Commission should reconsider introducing two *alternative* safe harbours; for example, for a license agreement to be exempted by the TTBER one of the respective market shares shall be met (either for technology or product markets).
11. The Group welcomes the inclusion of guidance with regard to Licensing Negotiation Groups ("LNGs"), as it provides for a balanced approach between LNGs and technology

¹ See, for example, "Commission provides guidance on sustainability agreement to reduce CO2 emissions in European ports", 9 July 2025, https://ec.europa.eu/commission/presscorner/detail/ro/ip_25_1769.

pools. The Group invites the European Commission to consider what further clarity can be provided in this respect, noting the importance to innovation of these arrangements; in particular, to be as clear as possible regarding the potential for pro-competitive effects of such groups and arrangements. To the extent that the revised Guidance places the onus on the participants to LNGs and those using pools to assess the competition impact, it should provide a sufficiently clear framework within which to undertake that assessment. This is particularly important given recent guidance in the automotive sector in relation to LNGs, which gives rise to risks of ‘chilling’ effects on other arrangements which do not give rise to concerns and are pro-competitive in nature. The Commission may also wish to consider further guidance with regard to technology pools which are limited to Standard Essential Patents.

12. The Group also welcomes in principle the acknowledgment that agreements in relation to data licensing should also benefit under the TTBER, although we again note that the supply of many types of data is merely an input, rather than a technology *per se*. We note the recognition by the Commission of the “*diversity of types of data and the rapid evolution of market practices in this area*”
13. As previously suggested by the Group, the European Commission may consider including in its guidance:
 - a. the criteria for assessing the competitive significance of data, notably the “four Vs” of big data as set out in the Apple/Shazam merger decision (variety, velocity, volume and value);² and
 - b. the possibility for foreclosure, taking into account other instruments, such as the Data Act, the principle of fair and reasonable access, and fair compensation.
14. The Group further notes the following terms at paragraphs 117 and 181 of the draft TTGs, which we consider could benefit from further elaboration:
 - a. first, “*commercially viable alternative to the licensed technology*” [emphasis added], is unclear;
 - b. second, what is “*other reliable market information*”, beyond volume data, is unclear;
 - c. third, a “*reasonable period of time*” should be elaborated upon with reference to a specific time period, for example, one to two years; and
 - d. finally, “*relative commercial strength*”, could be elaborated upon by reference to indicative criteria such as relative sales and branding and market position.

² European Commission Case M.8788, APPLE/SHAZAM, https://ec.europa.eu/commission/presscorner/detail/en/ip_18_5662.

15. Such guidance may also be supplemented by practical examples, in line with the approach followed in other similar instruments.
16. Finally, the Group welcomes the additional guidance on settlement agreements, reflecting the most recent caselaw in Servier, Lundbeck and Generics (UK) in relation to “pay-for-delay” agreements, cross-licensing and no-challenge clauses.