



The Review of the Technology Transfer Agreement Regime

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* The views expressed are those of the speaker and do not necessarily reflect those of DG Competition or the European Commission

Competition

Outline

Introduction

Questionnaire

Timetable



Introduction

Background

- Enabling Council Regulation 19/65/EEC
- TTBER 772/2004 and TT Guidelines
- Effects-based approach
- Expiry of the TTBER in April 2014

The Review so far

- Questionnaire
- Régibeau Study



The underlying philosophy on licensing

Emphasis of dynamic competition over static competition

- Innovation is an essential long term driver of competition and consumer welfare
 - Licensing promotes innovation by disseminating technology and generating income to innovators
 - Licensing creates design freedom
- Conclusion: licensing is generally pro-competitive and should be encouraged



No immunity from competition law

Paragraph 7 of the technology transfer Guidelines (TTG):

" The fact that intellectual property laws grant exclusive rights of exploitation does not imply that intellectual property rights are immune from competition law intervention. Articles 81 and 82 are in particular applicable to agreements whereby the holder licenses another undertaking to exploit his intellectual property rights. "



Questionnaire

General

- 38 replies mainly from law firms, law and industry associations but also a few companies and citizens commented
- Majority indicated that the current system works well
- Suggestions for improvements in both the TTBER and Guidelines

Questionnaire (2)

Scope

- Extension of TTBER to patent pools, copyright and trademarks?

Market share thresholds

- Definition of technology market
- Market share calculation
- Level
- Alternatives



Questionnaire (3)

Hardcore restrictions

- Simplification
- Streamline with other BERs
- Competitors: reciprocity and non-reciprocity
- Non-competitors: (even) more lenient treatment?

Excluded restrictions

- Grant back clauses



Questionnaire (4)

Patent pools

- General appreciation of policy
- Essentiality

Study by Pierre Regibeau and Katharine Rockett

"Economic analysis provides some support for the current antitrust treatment of patent pools. In particular, current analysis broadly suggests a rather relaxed attitude towards pools that form spontaneously and voluntarily as long as independent licensing clauses are included....."



Timetable

- End of 2012: Drafting of potential new Guidelines and/or TTBER and consultation with other Services and Member States
- Spring/Summer 2013: second public consultation
- Before April 2014: Final adoption



THANK YOU