Paul, Weiss

Client Memorandum

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European Commission Consults on Revised Block Exemption and Guidelines for Technology (and Data) Licensing

Overview

On 11 September 2025, the European Commission (the "Commission") launched a public consultation on draft revisions to the Technology Transfer Block Exemption Regulation (the "TTBER") and the Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements (the "Guidelines"). The Commission has also published new guidance: an expert report on data licensing.

Businesses are required to self-assess—i.e., reach their own conclusions—on the compliance of their commercial arrangements with EU competition law's prohibition on anti-competitive agreements. The TTBER provides a blanket exemption or "safe harbour" from the prohibition for licences of certain technologies and intellectual property rights (including patents and knowhow), if they fall within its parameters. The Guidelines provide wider discussion and analysis to boost legal certainty about whether agreements that fall outside the blanket exemption under the TTBER are nevertheless valid and enforceable.

- The current TTBER dates from March 2014 and expires in April 2026. The revision aims to update the current rules based on the evaluation completed in November 2024, to reflect recent market developments and case law from the Court of Justice of the European Union since 2014.
- Although the evaluation confirmed that the TTBER and the Guidelines have helped companies self-assess the antitrust compliance of their technology licences, it concluded that they do not provide sufficient legal certainty. The revision also responds to the need for guidance related to data licensing and licensing negotiation groups ("LNGs"), which have both grown in significance in recent years.
- Apart from the new additions related to data licensing and LNGs, changes are mostly fine-tuning rather than substantial reform. Many provisions important to pharma licensing, for example (such as non-compete restrictions on licensees, exclusive grant-backs and termination-on-challenge provisions) remain essentially unchanged.
- The importance of the TTBER and Guidelines for markets powered by innovation, including the pharma and tech sectors, has been underlined by the Commission's decision to abandon its proposal to legislate on standard essential patents ("SEPs"). The revisions to the Guidelines seek to enhance the available guidance and legal certainty on antitrust aspects of licensing pools and SEPs but do not have the same scope or ambition as the abandoned SEP legislation.

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Main proposed changes

- **TTBER market share thresholds**: The application of market share thresholds presents practical challenges for companies in dynamic and innovative markets where information is limited on emerging and new technology applications, substitutability, and third-party market shares. The draft revised TTBER offers greater clarity on how to calculate market shares in technology markets. For instance, not-yet commercialised technologies will be considered as having zero market share and will benefit from exemption.

- **Grace period for block exemption**: If the parties' market share starts to exceed the TTBER thresholds during the term of the agreement, it will continue to benefit from the TTBER exemption and remain legally valid during the grace period which the revised guidance extend from two to three years.

- **Technology pools**: Technology pools – where parties combine their technologies into a package which is licensed between the contributors and to third parties – are not covered by the TTBER. However, the Guidelines set out the conditions for a "soft" safe harbour. The conditions of the safe harbour have been updated, including a requirement on pool members to disclose to licensees the technologies included in the pooled package, the methodology for assessing whether the technology is essential to the pool, and the results of those assessments. Additionally, the revised conditions require that charges are not imposed twice on licensees for the same technology.

New additions

- **Licensing Negotiation Groups**: The draft revised Guidelines outline the potential pro- and anti-competitive effects of LNGs, differentiating genuine LNGs from buyer cartels, assessing genuine LNGs under an effects-based framework and introducing a soft safe harbour for those that meet specific conditions.

- **Data licensing**: Recognising the growing significance of data licensing (which is not covered in the current TTBER), particularly due to the demand for AI training data, the draft revised Guidelines now clarify that the principles of the TTBER and Guidelines will apply when the licensed data are part of a database protected by copyright or by rights under the Database Directive.

The commercialisation of data as an asset is relatively new but an increasingly important input in many markets. The EU's Data Governance Act and Data Act have introduced regulation of various aspects of data markets and data contracts, including fair licensing terms, the conduct and authorisation of data market brokers and suppliers, and structures for sharing data as a donation for the public good. Data licences will need to combine Data Act compliance with a review of compatibility with the draft revised TTBER and Guidelines.

Next steps

- Interested parties have until 23 October 2025 to comment on the draft revised TTBER and Guidelines.

- The revised rules are intended to come into force on 1 May 2026. The draft revised TTBER envisages a transitional period of a year before it applies to agreements which were in compliance with the current TTBER (which expires on 30 April 2026).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Ross Ferguson
+44-20-7601-8646
rferguson@paulweiss.com

Annie Herdman
+44-20-7601-8602
aherdman@paulweiss.com

Nicole Kar
+44-20-7601-8657
nkar@paulweiss.com

Henrik Morch
+32-2-884-0802
hmorch@paulweiss.com

John Patten
+44-20-7367-1684
jpatten@paulweiss.com

Rich Pepper
+44-20-7601-8660
rpepper@paulweiss.com

Associate William Feerick, Senior Knowledge & Innovation Lawyer Catherine Hammon and trainee lawyer Nektaria Tsori contributed to this Client Memorandum.