

Legally Privileged & Confidential – DRAFT response 12 July 2023. Suggested responses are highlighted in yellow. If it is not possible to submit the response without answering each question, those that have been left open here should be answered with "Do not know". This submission will be made online; the lay-out of this review document is not perfect because it is a machine converted Word version of the pdf download from the EC's online portal.

Fields marked with * are mandatory.

TTBER Consultation questionnaire

Introduction

Article 101(1) of the Treaty on the functioning of the European Union ('the Treaty') prohibits agreements between undertakings that restrict competition, unless they contribute to improving the production or distribution of goods or services or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefits, in accordance with Article 101(3) of the Treaty.

Technology transfer agreements are agreements by which one party authorises another to use certain technology rights (for example, patents, design rights, software copyrights and know-how) for the production of goods or services. In many cases, such agreements either do not restrict competition, that is, they fall outside the scope of Article 101(1) of the Treaty, or, where they fall within Article 101(1), they create objective efficiencies that are passed on to consumers and meet the conditions of Article 101(3) of the Treaty. However, technology transfer agreements, or certain clauses in such agreements, can also have negative effects on competition. In particular, they may facilitate collusion, restrict the ability of competitors to enter the market or to expand, or harm inter- or intra-technology competition, for example by reducing the incentives to innovate.

Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty, by means of a regulation, to certain categories of technology transfer agreements. The Commission used this empowerment to adopt [Commission Regulation \(EU\) No 316/2014 on the application of Article 101\(3\) of the Treaty to technology transfer agreements](#) ("TTBER").

The Commission also provided guidance on the assessment of technology transfer agreements in the related [Commission Communication - Guidelines on the application of Article 101 of the Treaty to technology transfer agreements](#) ("TTGL").

Purpose of the evaluation

The purpose of this evaluation is to gather evidence on the functioning of the TTBER to enable the Commission to take an informed decision on whether to allow that Regulation to expire, prolong its duration or revise it to take account of market developments that have occurred since its adoption in 2014. The Commission will also evaluate the TTGL.

More information on the evaluation can be found in the Call for Evidence, published on the "Have Your Say" platform on 25 November 2022 and available [here](#).

Structure of the public consultation and how to respond to it

As part of the evaluation, the Commission will seek the views of all interested parties on the effectiveness, efficiency, relevance, coherence and EU added value of the TTBER and TTGL on the basis of this online questionnaire. The results of this consultation will serve as input for the evaluation.

The consultation is open for 12 weeks, and replies can be provided in all 24 official EU languages. This questionnaire contains both high-level and detailed technical questions. The questions are available in English, French and German and are grouped under the following evaluation criteria:

- **Effectiveness:** The Commission will evaluate whether the TTBER and TTGL have been effective in (i) exempting agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty; (ii) providing legal certainty, and (iii) providing a common framework for national competition authorities and national courts to ensure consistency in the application of Article 101 of the Treaty.
- **Efficiency:** The Commission will evaluate whether any costs created by the TTBER and TTGL for undertakings wishing to assess their agreements under Article 101 of the Treaty are proportionate in view of the benefits that the TTBER and TTGL have created for that assessment;
- **Relevance:** The Commission will evaluate whether the TTBER and TTGL are still relevant, taking into account market developments that have occurred since the adoption of the TTBER and TTGL in 2014;
- **Coherence:** The Commission will evaluate whether the TTBER and TTGL are coherent with other Union legislation, notably in the fields of intellectual property and competition; and
- **EU added value:** The Commission will evaluate whether the TTBER and TTGL, being an intervention at EU level, add value for the assessment of technology transfer agreements under Article 101 of the Treaty.

The information collected will provide part of the evidence that the Commission will use in order to decide whether to allow the TTBER, together with the TTGL, to expire, prolong its duration or revise it to take account of market developments that have occurred since 2014.

Nothing in this questionnaire may be interpreted as stating an official position of the Commission.

You are invited to provide your feedback through this online questionnaire. Please explain your replies and, where possible, illustrate them with concrete examples. At the end of the questionnaire, we also invite you to upload any documents and/or data that you consider useful to accompany your replies.

If you encounter problems with completing this questionnaire or if you require assistance, please contact COMP-TTBER-REVIEW@ec.europa.eu.

About you

- * Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Company/business
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority

- ☐ Trade union
- ☐ Other

* First name

Uta

* Surname

Schneider

* Email (this won't be published)

uschneider@marconi.com

* Country of origin

Please add your country of origin, or that of your organisation.

This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.

- | | | | |
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| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
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| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |

- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga

 Cambodia	Hungary	North Korea	Trinidad and Tobago
 Cameroon	Iceland	North Macedonia	Tunisia
 Canada	India	Norway	Türkiye
 Cape Verde	Indonesia	Oman	Turkmenistan
Cayman Islands	Iran	Pakistan	Turks and Caicos Islands
 Central African Republic	 Iraq	Palau	Tuvalu
 Chad	Ireland	Palestine	Uganda
 Chile	Isle of Man	Panama	Ukraine
 China	Israel	Papua New Guinea	 United Arab Emirates
 Christmas Island	Italy	Paraguay	United Kingdom
 Clipperton	Jamaica	Peru	United States
Cocos (Keeling) Islands	 Japan	Philippines	United States Minor Outlying Islands
 Colombia	Jersey	Pitcairn Islands	Uruguay
 Comoros	 Jordan	 Poland	 US Virgin Islands
 Congo	 Kazakhstan	 Portugal	 Uzbekistan
 Cook Islands	 Kenya	 Puerto Rico	 Vanuatu
 Costa Rica	 Kiribati	 Qatar	Vatican City
 Côte d'Ivoire	 Kosovo	 Réunion	Venezuela
 Croatia	Kuwait	 Romania	Vietnam
 Cuba	Kyrgyzstan	Russia	Wallis and Futuna
 Curaçao	Laos	Rwanda	Western Sahara
Cyprus	Latvia	Saint Barthélemy	Yemen
Czechia	Lebanon	Saint Helena	 Zambia
 Democratic Republic of the Congo	 Lesotho	Ascension and Tristan da Cunha	 Zimbabwe
		Saint Kitts and Nevis	

 Denmark  Liberia  Saint Lucia

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

☐ I agree with the [personal data protection provisions](#)

1. Information about you and the TTBER

Please note that this questionnaire uses the following defined terms, which have the same meaning as in the TTBER:

Technology rights mean know-how and the following rights, or a combination thereof, including applications for or applications for registration of those rights: (i) patents, (ii) utility models, (iii) design rights, (iv) topographies of semiconductor products, (v) supplementary protection certificates for medicinal products or other products for which such supplementary protection certificates may be obtained, (vi) plant breeder's certificates, and (vii) software copyrights.

Technology transfer agreements mean agreements by which one party authorises another to use certain technology rights (see previous definition) for the production of goods or services.

Intellectual property rights include industrial property rights, in particular patents and trademarks, copyright and neighbouring rights.

In view of these definitions, please answer the questions set out below, if applicable

1.1. Please specify the technology right(s) to which your knowledge of and/or experience with the TTBER primarily relates (multiple answers possible):

- ☒ Patents
- ☐ Utility models
- ☐ Design rights
 - Topographies of semiconductor products
- ☐ Supplementary protection certificates for medicinal products or other products
 - for which such protection certificates may be granted
- ☐ Plant breeder's certificates
- ☐ Software copyrights
 - Know-how
 - Other

1.2. Please identify the sector(s) to which your knowledge of and/or experience with the TTBER primarily relates by specifying the 2 digit NACE code referring to the level of "division" that applies to your business (see for reference pages 61 – 90 of [Eurostat's statistical classification of economic activities in the European Community](#)).

N.77.4

1.3. Please specify the goods and/or services to which your knowledge of and/or experience with the TTBER primarily relates.

Technology pools

1.4. Please specify whether you are primarily a licensor or a licensee of technology rights / whether your organisation primarily represents licensor(s) or licensees.

- ☐ Licensor(s)/organisation representing primarily licensors
- ☐ Licensee(s)/organisation representing primarily licensees Active as a licensor and a licensee to an equal extent/organisation
- ☐ representing both licensors and licensees to an equal extent
- None of the above

1.8. Please provide a general description of the impact of the TTBER and/or the TTGL on your/your organisation's business activities.

The TTGL have supported innovative licensing solutions that create licensing efficiencies through aggregated licensing platforms such as Avanci. The TTGL should continue to allow such industry-led and innovative solutions to develop and increase licensing efficiencies which benefit licensors, licensees and ultimately consumers.

2. Effectiveness

2.1. In your view, has the TTBER been effective in exempting **only** those **technology transfer agreements** (see definitions under 1 above) for which it can be assumed with sufficient certainty that they satisfy the conditions for an exemption under Article 101(3) of the Treaty?

- ☐ at most 1 choice(s)
- ☐ Yes
- ☐ No
- Do not know

2.2. Are there **licence agreements of intellectual property rights** or other technology rights (see definitions under 1 above), which are **not** covered by

TTBER but that in your view satisfy the conditions for exemption under Article 101 (3) of the Treaty?

at most 1 choice(s)

- ☐ Yes
- ☐ No
- ☐ Do not know

2.2.1. Please explain your answer.

2.3. In your view, has the TTBER been effective in providing legal certainty when assessing technology transfer agreements and/or certain clauses included in such agreements under Article 101 of the Treaty; in other words: are the rules clear and comprehensible, allowing you to understand and predict the legal consequences?

at most 1 choice(s)

- ☐ Yes
- ☐ No
- ☐ Do not know

2.3.1. Please explain your answer, noting that the table under question 2.5. gives you the opportunity to give feedback on particular provisions of the TTBER.

2.4. In your view, have the TTGL been effective in providing legal certainty when assessing technology transfer agreements and/or certain clauses included in such agreements under Article 101 of the Treaty; in other words: are the rules clear and comprehensible, allowing you to understand and predict the legal consequences?

at most 1 choice(s)

- ☒ Yes
- ☐ No
- ☐ Do not know

2.4.1. Please explain your answer, noting that the table under question 2.5. gives you the opportunity to give feedback on particular sections of the TTGL.

As an aggregated licensing platform, Avanci's response is limited to the TTGL's section on "technology pools". As mentioned in response to Question 1.8 above, the TTGL have supported innovative licensing solutions such as Avanci that create efficiencies through aggregated licensing platforms.

2.5. Please indicate the level of legal certainty provided by the TTBER and the TTGL for each of the following areas using the following number coding: 1 (very low legal certainty), 2 (slightly low legal certainty), 3 (appropriate level of legal certainty). If you do not know or if the question is not applicable to your organisation, please select "DK/NA".

No.	Areas/Provisions	Relevant provisions of the TTBER	Relevant paragraphs of the TTGL	Respondent's estimate of level of legal certainty
1	Definitions	Art. 1(1)	<i>various</i>	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
2	The list of intellectual property rights covered by the block exemption (scope)	Art. 1(1)(b)	44-45	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
3	Application of the TTBER (or its principles) to licensing of other types of IP rights	Art. 2(3)	47-50	<i>at most 1 choice(s)</i> 1 2 3 DK/NA

4	Concept of transfer	Art. 1(1)(c)	51-53	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
5	Production of contract products	Art. 1(1)(g)	58-66	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
6	Market definition	Art. 1(1)(j-m)	19-26	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
7	Distinction between competitors and non-competitors			
7.1	Definition of blocking position	-	29	<i>at most 1 choice(s)</i> 1 2 3 DK/NA

7.2	Actual and potential competition in the product market	Art. 1(1)(n)(ii)	30-34	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
7.3	Actual and potential competition in the technology market	Art. 1(1)(n)(i)	35-36	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
7.4	Guidance on drastic innovations and competition after the agreement	Art. 4(3)	37-39	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
8	Relationship with other Block Exemption Regulations	Art. 9	69-78	<i>at most 1 choice(s)</i> 1 2 3 DK/NA

9	Market share thresholds	Art. 3, Art. 8	79-92	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
10	Hardcore restrictions			
10.1	General Principles	Art. 4(1)	94-96	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
10.2	Price restrictions between competitors	Art. 4(1)(a)	99-102	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
10.3	Output limitations between competitors	Art. 4(1)(b)	103-104	<i>at most 1 choice(s)</i> 1 2 3

					DK/NA
10.4	Market and customer allocation between competitors	Art. 4(1)(c)	105-114		<i>at most 1 choice(s)</i> 1 2 3 DK/NA
10.5	Restrictions on the ability to carry out R&D and use of licensed technology between competitors	Art. 4(1)(d)	115-116		<i>at most 1 choice(s)</i> 1 2 3 DK/NA
10.6	Price restrictions between non-competitors	Art. 4(2)(a)	118		<i>at most 1 choice(s)</i> 1 2 3 DK/NA
10.7	Restrictions on passive sales between non-competitors	Art. 4(2)(b-c)	119-127		<i>at most 1 choice(s)</i> 1 2 3 DK/NA

11	Excluded restrictions				
11.1	Exclusive grant backs	Art. 5(1)(a)	129-132	at most 1 choice(s) 1 2 3 DK/NA	
11.2	Non-challenge and termination clauses	Art. 5(1)b)	133-140	at most 1 choice(s) 1 2 3 DK/NA	
11.3	Limitation on licensee's use or development of own technology (for non-competitors)	Art. 5(2)	141-143	at most 1 choice(s) 1 2 3 DK/NA	
12	Conditions for the withdrawal and disapplication of the block exemption	Art. 6, Art. 7	144-155	at most 1 choice(s) 1 2 3	

					DK/NA
13	Application of Article 101(1) and 101(3) outside the scope of the TTBER				
13.1	Safe harbour if there are sufficient independently controlled technologies	-		157-158	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
13.2	Relevant factors	-		159-168	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
13.3	Negative and positive effects of restrictive licence agreements	-		169-180	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
					<i>at most 1 choice(s)</i> 1

14	Obligations in licence agreements that generally do not restrict competition	-		183	2 3 DK/NA
14.1	Royalty obligations	-		184-188	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
14.2	Exclusive and sole licences	-		190-196	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
14.3	Sales restrictions	-		197-203	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
14.4	Output restrictions	-		204-207	<i>at most 1 choice(s)</i> 1 2

					3 DK/NA
14.5	Field of use restrictions	-		208-215	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
14.6	Captive use restrictions	-		216-220	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
14.7	Tying and bundling	-		221-225	<i>at most 1 choice(s)</i> 1 2 3 DK/NA
14.8	Non-compete obligations	-		226-233	<i>at most 1 choice(s)</i> 1 2 3

					DK/NA
14.9	Settlement agreements	-	234-243	at most 1 choice(s) 1 2 3 DK/NA	
14.10	Technology pools	-	244-273	at most 1 choice(s) 1 2 3 DK/NA	

2.5.1. If you have rated legal certainty as “very low” (1) or “slightly low” (2) for one or more areas/provisions, please explain the reasons for your rating. Please also explain whether the lack of legal certainty results from (i) specific provisions in the TTBER or specific guidance in the TTGL or (ii) the overall structure of the TTBER and/or TTGL.

2.6. Are there other areas for which you consider that the TTBER and/or the TTGL do not provide sufficient legal certainty? Please explain the reasons for your reply.

2.7. The TTBER and TTGL were last revised in 2014. In your view, which of the following changes made in the TTBER and the TTGL compared to the previous version of the block exemption regulation and guidelines have been effective in (i) exempting agreements for which it can be assumed with sufficient certainty that they satisfy the conditions for an exemption under Article 101(3) of the Treaty and /or (ii) providing legal certainty?

Please answer by completing the last column of the table below, answering with (Y) if you think the change was effective, (N) if you think the change was not effective, and (DK) if you do not know.

Changes made in the TTBER and TTGL	Answer
Creation of a soft law safe harbour for technology pools in Section 4.4 of the TTGL (paras 261-265)	<i>at most 1 choice(s)</i> Yes No Do not know
The exclusion from the block exemption of obligations on the licensee to assign to the licensor or to grant to the licensor an exclusive licence of the licensee's own improvements to the licensed technology (Art. 5(1)(a) of the TTBER)	<i>at most 1 choice(s)</i> Yes No Do not know
The exclusion from the block exemption of clauses which give the licensor the right to terminate a non-exclusive technology transfer agreement in the event that the licensee challenges the licensor's IP rights (Art. 5 (1)(b) of the TTBER).	<i>at most 1 choice(s)</i> Yes No Do not know

2.7.1. If you considered that one or more of the mentioned changes was not effective, please explain the reasons for your reply.

2.8. In your view, have the TTBER and TTGL achieved their objective of providing a common framework for national competition authorities and national courts to ensure consistency in the application of Article 101 of the Treaty?

☐ at most 1 choice(s)

☐ Yes

☐ No

☐ Do not know

2.8.1. Please explain your answer.

3. Efficiency

3.1. Do you consider that the TTBER and TTGL have created benefits for the assessment of technology transfer agreements under Article 101 of the Treaty, as compared to a situation in which such agreements would need to be assessed without the TTBER and TTGL?

☐ at most 1 choice(s)

☒ Yes

☐ No

☐ Do not know

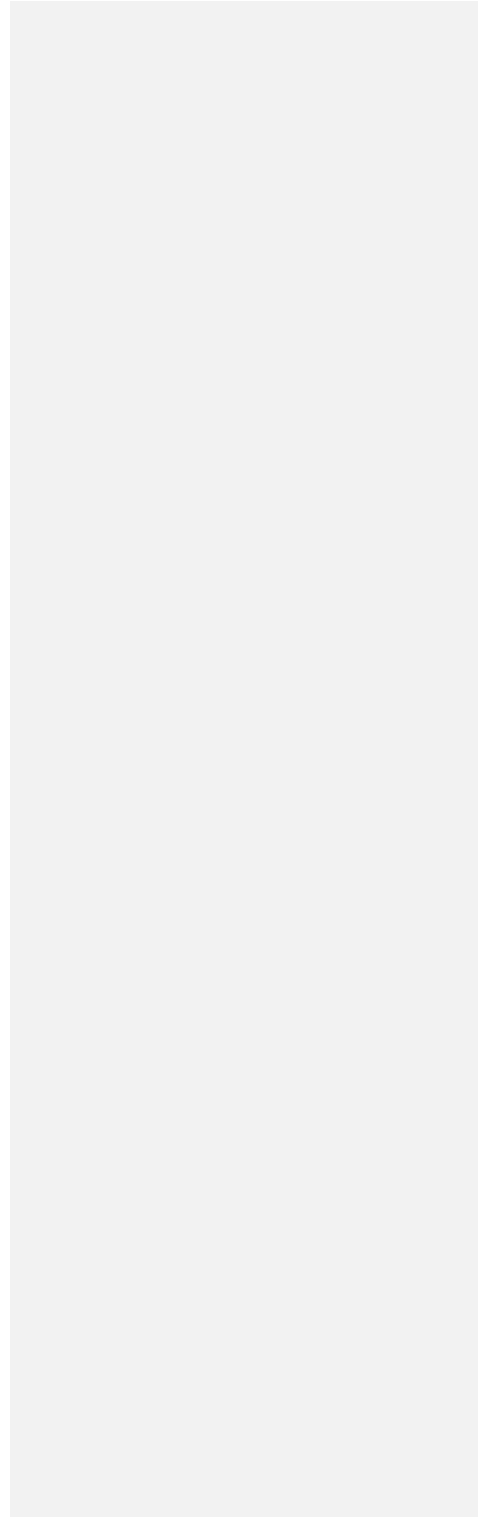
3.1.1. Please explain your answer

As mentioned above, as an aggregated licensing platform, Avanci's response is limited to the TTGL's section on "technology pools": the TTGL have supported innovative licensing solutions such as Avanci that create efficiencies through aggregated licensing platforms.

3.2. Do you consider that the TTBER and the TTGL have created costs for the assessment of technology transfer agreements under Article 101 of the Treaty (for example, fees paid to external consultants (lawyers and economists) and/or the cost of internal legal advice and time spent by commercial teams to negotiate and review contractual documents), as compared to a situation in which such agreements would need to be assessed without the TTBER and TTGL?

☐ at most 1 choice(s)

☐



- ☐ Yes
☐ No
☐ Do not know

3.2.1. Please explain your answer

3.2.3.1. Please explain your answer

3.3. Would the costs of ensuring compliance of your technology transfer agreements with Article 101 of the Treaty increase if the TTBER and the TTGL were not to be prolonged?

- ☐ *at most 1 choice(s)*
☐ Yes
☐ No
Do not know

3.3.1. Please explain your answer. If relevant, please estimate such cost increase, both in terms of value (in EUR) and as a percentage of your annual turnover (based

on your best estimates) and briefly explain the methodology of calculation.

4. Relevance

4.1. In your view, are the TTBER and TTGL still relevant for the assessment of technology transfer agreements under Article 101 of the Treaty, taking into account notably any market developments that have occurred since these instruments were adopted in 2014, either generally or in a particular industry?

- ☐ *at most 1 choice(s)*
☒ Yes
☐ No
Do not know

4.1.1. Please explain your answer.

We believe that the TTGL are sufficiently principle-based so they allow for innovative industry-led solutions such as Avanci to develop and create licensing efficiencies through aggregated – independent – licensing platforms. Indeed, Avanci is

independently owned and managed, and works with both licensors and licensees to find optimal licensing solutions. Avanci's independence allows it to freely engage with both patent owners and prospective licensees, establishing license terms that fairly balance the interests of the two constituencies and which can be widely accepted, by SEP holders and implementers alike, and reflect requirements and specificities of a particular industry sector. The TTGL, in their current form, have facilitated such developments.

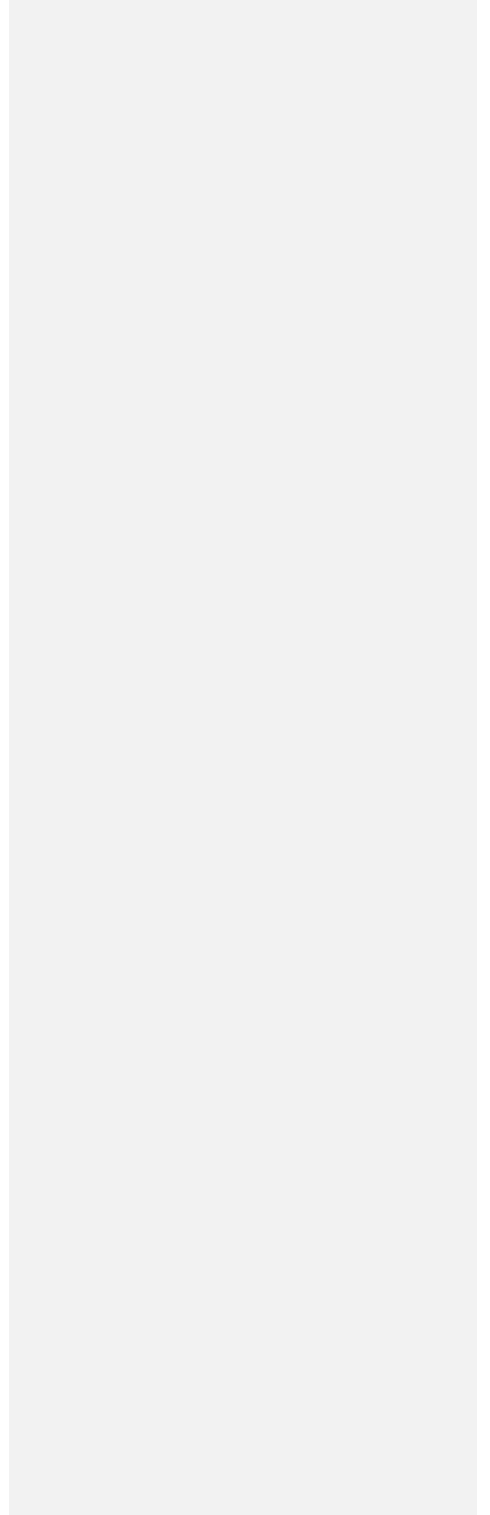
Avanci's success demonstrates the relevance of the TTGL. Avanci has provided a single, aggregated license for the vast majority of 4G/5G SEPs. And this has been taken up by the vast majority of automotive OEMs around the world, including, but not limited to Europe, the United States, Japan and Korea. The innovative, market-adopted solution provided by Avanci also demonstrates that changes are not needed to the current TTGL. Some responses to the Call for Evidence suggested changes to the TTGL to recognize licensing negotiation groups (LNGs). The concept of LNGs was considered during the European Commission's reconsideration of the Horizontal Guidelines, and ultimately the Commission rightly decided to remove from the Horizontal Guidelines as finally adopted on 1 June, a possible reference to LNGs as a form of collective purchasing. Such a reference had been present in an earlier draft. Avanci is not aware of any actual operational examples of LNGs and cautions that guidelines should first be informed by existing favorable experience.

LNGs are not necessary when the TTGL already contemplate the benefits and efficiencies of aggregated licensing platforms. The success of Avanci's platform demonstrates this point. Proponents of LNGs claim that they are simply "reverse patent pools" but that analysis is incorrect. In fact, LNGs raise significant antitrust risks through the aggregation of collective purchasing power. Further, LNGs would introduce inefficiencies because they are not needed when licensees already have the option of bilateral licensing or licensing through a platform, such as Avanci's in the automotive sector.

The interests of licensees are appropriately balanced via independent licensing solutions such as Avanci, which operate under the guidance of the current TTGL. Avanci only prospers if it succeeds in finding middle ground acceptable to both sides, which epitomizes the self-correcting balancing needed in a free marketplace.

At a more technical level, certain of the TTGL considerations that apply to technology pools would not be applicable to LNGs such as the safe harbor's provisions about challenging validity, licensing into the pool on a non-exclusive basis, and safeguards that only essential technologies are pooled. More importantly, other provisions would need significant adaptation and careful consideration in the context of LNGs. For example, in relation the exchange of sensitive information: in the case of LNGs this would need to cover competing product makers who would likely be exchanging information about highly commercially sensitive parameters such as production costs.

But regardless of such potential adaptations, Avanci's primary concern remains that LNGs create fundamental antitrust risks which cannot be solved through guidance - as also mentioned by other respondents to the Call for Evidence - and at best introduce inefficiencies and confusion in the marketplace.



5. Coherence

5.1. Are the TTBER and TTGL coherent with other Commission instruments that provide guidance on the interpretation of Article 101 of the Treaty, for example, the Research and Development Block Exemption Regulation (Regulation (EU) No 1217 /2010), the Specialisation Block Exemption Regulation (Regulation (EU) No 1218 /2010), the Commission Guidelines on Horizontal Agreements, the Vertical Agreements Block Exemption Regulation (Regulation (EU) No 2022/720) and the Commission Guidelines on Vertical Agreements?

at most 1 choice(s)

- ☐ Yes
☐ No
☐ Do not know

5.2. Are the TTBER and TTGL coherent with other existing or upcoming EU legislation and policies relating to the fields of intellectual property and competition law, for example the Commission's proposed initiative relating to Standard Essential Patents?

at most 1 choice(s)

- ☐ Yes
☒ No
☐ Do not know

5.2.1. Please explain your answer.

As mentioned above, Avanci considers the TTGL's provisions on "technology pools" to be sufficient and efficient. However, other European Commission initiatives such as the proposal for a regulation on standard essential patents (SEP proposal) risks to upset the efficiencies and industry-supported innovative solutions that aggregated independent licensing platforms such as Avanci bring to the market. The envisioned procedure of the SEP proposal for groups of stakeholders, whether SEP holders or implementers, to notify the EUIPO of joint views on an aggregate royalty cap may essentially lead to companies being forced to discuss pricing information and policy. The SEP proposal directly fosters spillover effects and collusion as it does not foresee any provisions to avoid such conduct. Furthermore, it is highly questionable how various, potentially diverging views on an aggregate royalty cap will indeed help achieve the European Commission's proclaimed objectives, namely introducing more transparency, predictability and efficiency into SEP licensing, particularly for SMEs.

- ☐ 5.3. Are the TTBER and TTGL coherent with other instruments (for example multilateral agreements and soft law) adopted at international level (other than in the EU) relating to the fields of intellectual property and competition law, such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)?

at most 1 choice(s)

- Yes
No

Do not know

5.3.1. Please explain your answer.

5.4. Do you consider that the provisions of the TTBER and the guidance provided by the TTGL are coherent in themselves and/or with each other?

at most 1 choice(s)

- ☐ Yes
☐ No
☐ Do not know

5.4.1. Please explain your answer.

6. EU added value

6.1. Have the adoption of the TTBER and TTGL at EU level added value compared with what could have been achieved by national regulations and/or guidelines?

at most 1 choice(s)

- ☐ Yes
☐ No
☐ Do not know

6.1.1. Please explain your answer

7. Other

7.1. Do you wish to make any additional comments regarding the evaluation of the TTBER and TTGL?

7.2. If you wish to submit documents (e.g. data, research paper, position paper) that you consider to be relevant for the evaluation of the TTBER and TTGL, please upload them below. Please make sure that you upload only non-confidential versions. If the uploaded documents support your replies to any of the previous questions, please indicate the numbers of those questions.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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