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# EU Competition Rules for Technology License Agreement

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- 1 -

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HG-3

# Technology Transfer Block Exemption Regulation (TTBER) (EC) No. 772/2004

- Has replaced TTBER 240/96 EEC from May 1, 2004
- Is accompanied by extensive Guidelines
- TTBER 772/2004 and Guidelines “deny” any presumption of a violation of Art. 81(1) EU Treaty by Technology License Agreements

- 2 -

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HG-3

## Kinds of Agreements Covered

- Patent licenses
- Know-how licenses
- Copyright computer software licenses
- Mixed licenses
- Note: “patents” comprise patents, SPCs, utility models, designs, topographies, plant varieties

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## Market Thresholds

- Parties competitors
  - ◆  $\leq 20\%$  joint market share
- Parties non-competitors
  - ◆ initially each party  $\leq 30\%$
- In case of later excess
  - ◆ Exemption applicable for 2 consecutive years after 1st excess year

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## Hard Core Restrictions in Case of Competitors

- Price fixing
- Limitation of output/sale
- Allocation of markets/customers, except (permitted):
  - ◆ Field of use restrictions
  - ◆ Exclusivity of license as such
  - ◆ Prohibition of active/passive sales into territories of licensor and licensee, respectively
  - ◆ Prohibition of active sales into territories of other licensees
  - ◆ Restriction of manufacturing to own use of licensee
- Restriction of licensee to use own technology
- Restriction of parties to carry out R&D, except when necessary to prevent disclosure of licensed know-how to third parties

## Hard Core Restrictions in Case of Non-Competitors

- Fixing of minimum prices
- Restriction of passive sales of licensee, except (permitted):
  - ◆ Prohibition of sales to territory/customer exclusive to licensor
  - ◆ Prohibition of sales to territory/customer exclusive to another licensee for two years after marketing by the other licensee
  - ◆ Restriction of manufacturing to own use of licensee only
  - ◆ Restriction of sales to end-users, if licensee is wholesaler
  - ◆ Restriction of active or passive sales to end users if licensee belongs to selective distribution retail system
- Parties remain Non-Competitors if they have been such at conclusion of agreement

## Excluded Restrictions

- Exclusive improvement grant back obligation on licensee
- Improvement assignment obligation on licensee
- Non-attack clause
- If parties non-competitors, restriction of licensee to use own technology and restriction of parties to carry out R&D, except when necessary to prevent disclosure of licensed know-how to third parties

## Examples of Excluded Restrictions I

- “If the Licensee makes any inventions improving the licensed technology, he is obliged to patent the respective improvement(s) in his own name and at this own cost and to grant an exclusive license under such patent application and patent, respectively, to the Licensor.”
- “If the Licensee makes any inventions improving the licensed technology, he is obliged to assign the aforementioned improvement to the Licensor, who is entitled to protect the respective improvement by (a) patent(s) in his own name and at his own cost.”

17/18/01/06 - Licensing in EU  
HG-3

## Examples of Excluded Restrictions II

- “The Licensee is obliged not to attack any of the licensed patent applications and patents, respectively, in any manner, neither directly nor indirectly, whether by filing observations to examining authorities, filing opposition, and/or filing invalidation actions.”
- “The Licensee is not entitled to use, on a commercial scale, particularly not for sale and distribution, any technology, either developed by the licensee himself or obtained by the licensee from a third party, which would be in competition with the licensed technology.”

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## Examples of Excluded Restrictions III

- “The Licensee is not entitled to carry out any R&D with the aim of developing technologies which would be in competition with the licensed technology.”

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