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RESPONDENT PROFILE

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Assimilated Technology Transfer Block Exemption Review Consultation on the CMA's Proposed Recommendation to the Secretary of State

Ericsson wishes to thank the Competition and Markets Authority (CMA) for the opportunity to provide input on CMA's recommendation to the Secretary of State to make a Technology Transfer Block Exemption Order (Recommended TTBE) replacing the EU Technology Transfer Block Exemption Regulation which will expire on 30 April 2026.

Our comments below focus on **Policy Question 16** addressing technology pools and so-called 'Licensing Negotiation Groups' (LNGs).

ABOUT ERICSSON

Ericsson is a leading global provider of Information and Communication Technology. For nearly 150 years, we have been pioneers in creating technology for communication. Today, Ericsson's high-performing networks provide connectivity for billions of people every day in more than 180 countries around the world.

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Ericsson has over 94,000 employees worldwide, almost 28,000 of whom are dedicated to Research and Development (R&D). We have invested billions of pounds over more than three decades to create the world's 2G, 3G, 4G and 5G standardized technology. In 2024, Ericsson's R&D budget was approximately 53bn SEK (around 4.15bn GBP). With more than 60,000 granted patents worldwide, we hold the leading portfolio in the industry. Over the years, Ericsson has signed more than 100 patent portfolio license agreements. In 2024, licensing revenue amounted to 14bn SEK (around 1.1 bn GBP).

TECHNOLOGY POOLS AND LNGs

Our response concerns technology pools and LNGs in the context of the licensing of patented, standardised technologies on fair, reasonable, and non-discriminatory (FRAND) terms and conditions.

While technology pools are well-established in FRAND licensing, LNGs are a novel and untested concept without clear contours. In contrast to technology pools, which have experienced notable market growth particularly in the last decade, there are – to our knowledge – no examples yet of official LNGs operating in the FRAND licensing field.

Technology pools are addressed by competition law already. For instance, as the CMA rightly notes, the 2014 EU Technology Transfer Guidelines (OJ C 89, 28.3.2014; EU TTGs) include a soft safe harbour for the establishment and operation of technology pools, which has, generally, worked well in practice and has increased legal certainty.

In contrast to technology pools, competition law guidance regarding the creation and operation of LNGs is missing to date. During the recent revision of the EU Horizontal Guidelines, which was finalised in July 2023, safe harbour conditions for LNGs were explicitly considered but, ultimately, excluded (C/2023/4752, OJ C 259, 21.7.2023).

We understand that the CMA considers not to include technology pools and LNGs in the Recommended TTBEQ, but to provide guidance on both in the future related guidelines (TTBEQ Guidelines).

Should the CMA include technology pools in the TTBEQ Guidelines, it appears appropriate to stay in line with the guidance laid down in the EU TTGs. As the CMA observes, it would, indeed, be reasonable to avoid unnecessary differences between EU and UK technology licensing block exemptions, as they could increase cost for stakeholders and potentially disincentivize technology licensing in the UK and/or the EU.

In any case, it is important that technology pools remain subject to a competitive and flexible approach to be able to address the dynamism of the industry and the legitimate interests of different stakeholders. Additional and stricter regulation on technology pools must be carefully evaluated to not hinder the creation of innovative and pro-competitive industry-led initiatives for specific verticals and products.



On the other hand, LNGs create a clear risk of anti-competitive effects. LNGs have the potential of facilitating group boycotts, collusion and horizontal coordination, resulting in illicit agreements and even in by object restrictions of competition. The latter could particularly be the case, as far as LNGs would result in unlawful price-fixing of standardized technologies and/or facilitate the sharing of competitively sensitive and confidential market information among LNG members.

In this context, it is important to note that LNGs are not akin to and do not operate as 'reverse' technology pools. Technology pools are composed of owners of patents covering complementary technologies and aim at offering an efficient one-stop licensing solution for the benefit of all parties. Technology pools generate transaction cost efficiencies without enhancing market power. LNGs would, however, bring together competitors (substitutes), enhancing market (buyer) power in license negotiations. This creates a risk of depressing royalties for the licensing of patented, standardised technologies at a sub-FRAND level, which could, in turn, lead to significant anti-competitive effects on innovation, open standardisation – and ultimately consumer choice and product quality.

Guidance – particularly in the form of soft safe harbour conditions – for LNGs in the TTBE Guidelines seems premature.

Considering that there are neither real-life examples of official LNGs operating in the market nor a respective competition enforcement practice to date, there are insufficient grounds for a robust assessment of the potential effects of LNGs in the licensing and/or (downstream) product markets. In dynamic markets, like the FRAND licensing market for technology rights, a regulatory intervention that would create a presumption of legality should start from a case-by-case analysis: from *ex post* enforcement, proceeding to a well-informed, potential *ex ante* regulation in the form of guidelines.

CONCLUSION

Technology pools are a well-established market mechanism in FRAND licensing that is subject to a soft safe harbour framework established by the EU TTGs more than a decade ago, which has, generally, worked well, offering legal certainty. Should the CMA, as suggested, include technology pools in the TTBE Guidelines, it seems appropriate to stay in line with the guidance included in the EU TTGs, securing a harmonised approach towards FRAND licensing to the benefit of all industry stakeholders.

On the contrary, Ericsson believes that no specific reference or any type of soft safe harbour for LNGs should be included in the TTBE Guidelines at this point. The absence of any meaningful commercial and/or competition enforcement practice to date, as well as the significant potential anti-competitive effects of LNGs in both licensing and (downstream) product markets require a case-by-case analysis prior to any regulatory intervention that would create any presumption of legality and, consequently, curtail the possibility of *ex post* corrective enforcement.

Ericsson thanks the CMA for its consideration of the points above. We remain at your disposal for further information and questions.