

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

Consultation Questions

Question 16: Do you agree with the CMA's proposal to recommend that the Recommended TTBE should not apply to agreements establishing technology pools or LNGs, but instead to consider whether to cover such issues in guidance? Please provide reasons for your answer.

Technology Pools:

Technology pools are well-established mechanisms that are familiar to competition authorities globally. Given this familiarity, we believe that technology pools do not need to be covered in the TTBE. Providing guidance in Technology Transfer Guidelines is sufficient. We urge the CMA to focus on promoting joint licensing solutions when drafting the Technology Transfer Guidelines, as these solutions enhance efficiency and innovation while maintaining competitive markets.

LNGs:

Including LNGs in either the TTBE or the Technology Transfer Guidelines would be inappropriate due to their inherently anti-competitive nature. LNGs present fundamental antitrust risks that cannot be mitigated through guidance. These risks stem from the core structure and objectives of LNGs, which aggregate buyer power to influence licensing terms, leading to anti-competitive outcomes such as collective downward pressure on pricing, collective hold-out behaviour, and market distortion. LNGs also facilitate anti-competitive information exchanges among competitors and, as a buyer cartel, would restrict innovation and distort competition in the Standard Essential Patent ("SEP") licensing space.

The notion that LNGs could operate on a voluntary and non-binding basis does not mitigate these concerns. Such an arrangement would merely add inefficiency, imposing unnecessary costs and delays on the licensing process without addressing the fundamental anti-competitive risks.

Additionally, there is no legitimate need for LNGs in the current licensing landscape, as a better solution already exists. Patent pools and in particular independent licensing platforms provide fair and market-based solutions for SEP licensing while avoiding the risks associated with LNGs, directly contravening the purported objectives.

The proponents of LNGs claim that they are needed to counterbalance the perceived collective negotiating power of patent pools or SEP owners. This claim is fundamentally flawed. Each SEP owner offers complementary inputs: an OEM needs a license from each SEP owner, as a license from one does not eliminate the need for a license from other SEP owners. Patent pools combine these complementary inputs, offering simplicity and efficiency. And importantly, licensors and licensees retain full freedom to negotiate bilaterally.

Question 17: What impact would have it have on your business or those you represent if the Recommended TTBEQ applied to agreements establishing technology pools or LNGs? Please provide reasons for your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

The inclusion of LNGs in the TTBEQ or indeed the guidelines would have a significant negative impact on ourselves and all concerned with the licensing eco-system.

Continuing coverage of technology pools in the guidelines will have, as in the past, a significant positive impact on that eco-system. There is no call to extend the TTBEQ itself to pools.

Please see response to Question 16.

Question 18: What impact would have it have on consumers if the Recommended TTBEQ applied to agreements establishing technology pools or LNGs? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

The inclusion of LNGs in the TTBEQ or indeed the guidelines would have a significant negative impact on consumers. O An LNG's inherent anti-competitive nature would result in diminished technological progress, as licensors are unable to generate a reasonable return-on-investment and are subsequently led to deprioritise or abandon high-risk, high-cost research and development projects. The impact on consumers is indirect but profound. Reduced innovation means fewer new technologies entering the market, limiting the availability and quality of products and services. Consumers ultimately bear the cost of stagnation, as markets become less dynamic and competitive.

Continuing coverage of technology pools in the guidelines will have, as in the past, a significant positive impact on consumers. There is no call to extend the TTBEQ itself to pools.

Please see response to Question 16.