

## **SME Safe Island Limited (“SSIL”)**

Submission of SSIL to the CMA’s Consultation on Assimilated Transfer Technology Block Exemption Review and Proposed Recommendation to the Secretary of State dated 14<sup>th</sup> March 2025

### **Responses to Questions**

**Question 1: Do you agree with the CMA’s proposed recommendation to the Secretary of State to make a Block Exemption Order to replace the retained TTBER with the Recommended TTBER, rather than letting it lapse without replacement or renewing it without varying the retained TTBER?**

SSIL considers that the current guidance and Guidelines need to be reviewed and updated, and steps need to be taken by the CMA to ensure that there is compliance with the current and future Guidelines.

**Question 2: In your response to our questions, where possible please indicate the size of your business (or those businesses you represent) in terms of number of employees:**

SME Safe Island Limited (“SSIL”) is a limited company incorporated in England & Wales. It is a micro-SME.

**Question 3: In your response to our questions, where possible please indicate the industry in which you consider your business (or those businesses you represent) operates (using SIC codes if known):**

Patent licensing

**Question 4: In your response to our questions, where possible please indicate how long your business has been in operation (or if you are an advisor, generally how long the businesses you represent have been in operation).**

SSIL was incorporated on 9<sup>th</sup> February 2023.

**Question 16: Do you agree with the CMA’s proposal to recommend that the Recommended TTBER 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.**

Under paragraph 3.39 of the Consultation the CMA stated that it refers to LNGs (Licensing Negotiation Groups) in this context as industry associations or groups representing implementers of standards that jointly negotiate licences with individual Standard Essential Patents (SEP) holders and SEP technology pools.

There are also other potential licensing structures and formats that should also be addressed in the updated Guidelines, and one such structure would be a class licensing programme. This is a type of licensing programme where SEP holders grant a license to a licensing company which can grant sub-licenses to a ‘class’ of organisations, such as SMEs.

When the CMA issues updated Guidelines, SSIL requests that the CMA includes guidelines for dealing with licensing and sub-licensing by SEP holders to a ‘class’ of licensees, such as SMEs (a “Class Licensing Programme”).

An example of such a potential programme is the SME Class Licensing Programme of SME Safe Island Limited ("SSIL"). SSIL is an independent SEP licensing programme formed to enable the granting of SEP license rights to SMEs. SSIL is not an industry association and it would not be negotiating for a specific group of companies.

SSIL is a licensing vehicle by which an SME, while it meets the criteria of an SME, can obtain a license to SEPs of the participating SEP holders to enable the SME to make, market and sell products compliant with the standard.

Under the current structure, SEP holders will license to SSIL their SEPs and give SSIL the right to grant sublicenses only to SMEs for the duration of the time they meet the criteria of an SME. An SME is any organisation that has fewer than 250 employees and a turnover of less than €50 million or a balance sheet total less than €43 million; SME is a defined term in accordance with the UK Government guidelines:

<https://www.gov.uk/government/publications/fcdo-small-to-medium-sized-enterprise-sme-action-plan/small-to-medium-sized-enterprise-sme-action-plan> .

Under the current structure of the SSIL Class Licensing Programme SEP holders will grant SSIL a license to the SEPs on a royalty free basis. The term of the sublicense right will be for five years, with five years rolling notice.

Each sublicense to the SME will be for a single year, renewable in the following year if they continue to be entitled to claim such status. There will be an administration fee payable to SSIL by the SME and the SME will need to certify in advance that it is an SME.

In exchange, the SME will agree that when it is no longer an SME (i.e., from the date when it no longer meets the criteria of an SME), it will agree to enter into good faith negotiations with the SEP holders participating in the programme to take a license to their SEPs, and to go to mediation and/or arbitration if terms cannot be agreed within 6 months of it ceasing to be an SME.

### Impact on SMEs and consumers

SEP licensing continues to challenge the technology sector and other industries, with no resolution in sight. Companies are not using standards because of the complexity of legal and financial issues surrounding SEP licensing; this is the antithesis of the goal of standardisation and the proliferation of standards.

The Internet of Things ("IoT") is emerging and coming into its own. There are thousands of SME's making or designing innovative connected products. All of these companies may be infringing valid patents of SEP holders if they are not licensed themselves or somewhere in their supply chains.

Fostering successful new SMEs is a key driver of future economic growth and central to the UK's competitive position - but SEP/FRAND licensing is complex and a significant burden and worry for SMEs.

Many SEP holders say they don't bother collecting SEP royalties from SMEs because it is too time-consuming and expensive and there is not the licensing income to cover it. Other SEP holders do send out licensing requests to some SME's, but there is no structured process; those SME's that receive licensing requests, and that enter into licenses in good faith, feel discriminated against. There is not a level playing field if some SMEs are paying royalties while others are not.

SSIL aims to deliver a solution for SEP/FRAND licensing that works for SEP holders and also for SMEs, to ensure they are licensed and can innovate on top of the standard; it is intended to foster innovation and new products and services based on emerging standards.

In April 2023 the European Commission published a Proposal for SEPs, which proposed that SEP holders shall consider offering SEPS FRAND terms and conditions that are more favourable than the FRAND terms and conditions they offer to enterprises that are not micro, small and medium-sized for the same standard and implementations: *"Furthermore, all other SEPs holders are encouraged to offer more favourable FRAND terms and conditions to SMEs and to consider discounts or royalty-free licensing for low sales volumes (irrespective of the implementer's size)"*.

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754578/EPRS\\_BRI\(2023\)754578\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754578/EPRS_BRI(2023)754578_EN.pdf)

There is today some uncertainty about the status of the EU SEP Regulation but what is clear is that the European Commission recognised the need to treat SMEs as a special category or class of SEP licensees.

For UK SMEs, updates to the Guidelines that address the issues set out above would deliver a host of significant benefits, ultimately fostering affordability and innovation. This will ensure that consumer interests are protected while promoting access to advanced and cost-effective products.

Class Licensing programmes can help avoid extensive litigation, enhance competition, create efficiencies, and benefit the UK economy and society by increasing the availability of innovative products using standardized technologies, including those in emerging fields like the Internet of Things.

The UK should consider issuing Guidance, including a best practice guide or safe harbour provisions, to promote the effective use of Class Licensing to SMEs while addressing competition concerns. An SME Class Licensing Programme would enable a larger number of licensees to deliver diverse products and services to consumers. This would reinforce the UK's commitment to fostering innovation and competition while safeguarding the interests of all parties in the licensing ecosystem.

#### Contact Details:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11<sup>th</sup> April 2025

