



Response to the CMA's Consultation on the Proposed Recommendation on the Assimilated TTBER

11th April 2025

Nokia would like to thank the Competition & Markets Authority (CMA) for the opportunity to provide feedback on the Proposed Recommendation to the Secretary of State to replace the Assimilate Technology Transfer Block Exemption Regulation (Assimilated TTBER).

At the outset, Nokia wishes to commend the CMA on its commitment to an evidence-based assessment and its open and constructive approach to the review process. Nokia contributed to the CMA's Call for Inputs on the ATTBER and the Technology Transfer Guidelines (TTG or Guidelines), and we are pleased that the CMA considered our inputs in making the Proposed Recommendation.

We will limit our responses to questions where we are in a position to provide additional feedback and information beyond what was included in our Response to the Call for Inputs.

Nokia confirms that our responses do not contain any confidential information.



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?

Yes

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:

- More than 250 employees

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):

- Manufacturing telecommunication equipment and infrastructure
- Research and development of technologies

Please see our Response to the Call for Inputs for more information about Nokia and our business.

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).

Nokia has been in operation since 1865. For more information on our history, please visit <https://www.nokia.com/we-are-nokia/our-history/>

Question 5: Relative to current arrangements, if the Assimilated TTBER were allowed to expire without replacement, how much (if at all) would this impact your business or the businesses you represent? Please provide reasons for your view.

d) Moderate negative impact

Allowing the ATTBER to expire without a replacement would require companies to rely on general competition law provisions and more generic guidelines on horizontal or vertical agreements, which are often not on point, or unclear when it comes to technology rights. This would, in our view, increase legal uncertainty and compliance costs.

Question 6: Relative to current arrangements, if the Assimilated TTBER were allowed to expire without replacement, how would this impact consumers? Please provide reasons for your view.

d) Moderate negative impact

As mentioned in our reply to Q5, the legal uncertainty and compliance costs could have chilling effects on the dissemination of technology with a possible impact on consumers.

Question 10: Do you agree with the CMA' s Proposed recommendation to include the definitions of 'active sales' and 'passive sales' used in Article 8(7) of the VABEO in the Recommended TTBER?

As mentioned in our Response to the Call for Inputs, we believe that the distinction between active and passive sales is problematic in non-retail (request-for-quotation) based industries where transport costs are low, and supplier offers are not transparent. In those industries, the more conservative treatment applied to passive sales restrictions likely has chilling effects on the dissemination of technology.

Question 11: Relative to current arrangements, if the CMA' s Proposed Recommendation for definitions in the Recommended TTBER were to be adopted, how do you anticipate that this would impact your business or those that you represent? Please describe the scale of any legal or expert advice needed (e.g. time spent with consultants).

c) Negligible impact

In our practice, we already considered the definitions of active and passive sales from the Vertical Agreements Block Exemption.

Question 14: If the CMA were to recommend removing the distinction between competing and non-competing businesses currently set out in the Assimilated TTBER, what impact would this have on your business or the businesses of those you represent? Please describe the scale of any impact (e.g. as a result of time spent with consultants).

b) Moderate positive impact

We believe removing the distinction between competing and non-competing businesses would make the ATTBER easier to apply as the analysis would focus on efficiencies and undesirable effects of agreements, regardless of the type of technology transfer agreement. This would improve legal certainty for procompetitive technology transfers between industry players, which could be particularly beneficial in contexts where the competitive relationship between the parties is not yet well-established or where the parties only compete over limited parts of their portfolios.

Question 15: If the CMA were to recommend removing the distinction between reciprocal and non-reciprocal agreements currently set out in the Assimilated TTBER, what impact would this have on your business or the businesses of those you represent? Please describe the scale of any legal or expert advice needed (e.g. time spent with consultants).

b) Moderate positive impact

We believe removing the distinction between reciprocal and non-reciprocal agreements would make the ATTBER easier to apply as the analysis would focus on efficiencies and undesirable effects of agreements, regardless of the type of technology transfer agreement. We note that the definition of reciprocal agreements covers technologies (even if not competing) that can be used for the production of competing products. Even within competing technologies, the parties may hold complementary IP rights, which could justify cross-licensing relationships. Treating all reciprocal agreements under an approach tailored for competition-reducing agreements does not properly reflect the broad reality of “reciprocal” agreements as currently defined and likely has a chilling effect on the dissemination of technology among market participants in the same industry.

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.

We support the CMA's proposal that the Recommended TTBER should not apply to technology pools and LNGs on the basis that both are, by their nature, multi-party agreements and therefore fall outside the scope of the current ATTBER, which covers only agreements involving two parties (i.e. bi-lateral arrangement). We agree with the CMA that including multi-party agreements in the Recommended TTBER would significantly change the scope and purpose of the Recommended TTBER from the Assimilated TTBER.

We look forward to engaging further with the CMA concerning any potential guidance on such matters.

It is, however, important to emphasise at the outset that technology pools and LNGs are not the same and should not be treated the same. As explained in our Response to the Call for Inputs, technology pools and LNGs have fundamental differences, notably: (i) there is no market power issue with pools, and (ii) LNGs can give rise to serious issues anti-competitive and hold-out concerns which do not occur with pools. Therefore, the competitive assessment of these two separate and distinct mechanisms should not be the same.

In addition, as noted above, there is a significant difference in existing experience between patent pools and LNGs which should be taken into account when preparing the guidance document. There is already considerable practical experience, decisional practice, and case law with regard to patent pools, which cannot be said for LNGs. Provisions on patent pools were included in the EU's TTG since 2004, and prior to that, the European Commission individually examined patent pool arrangements. Over the years, many patent pools have been established and are functioning in the market. On the other hand, while they have been the subject of some debate and have been discussed in certain (academic) articles (such as those identified in our Response to the CMA's Call for Inputs on the ATTBER and TTG), LNGs are a relatively new and novel phenomenon. We are not aware of any functional LNG in existence currently in the West. In this regard, we understand that, after a year, the proposed automotive LNG that was considered by the German Federal Cartel office is not operational. Consequently, there is simply no comparable first-hand experience of LNGs that would enable the CMA and other relevant stakeholders to draw any meaningful conclusions on anti-competitive risks and any potential efficiencies/benefits of LNGs. In these circumstances, we are of the view that it is premature to consider the inclusion of LNGs in the TTG. In any event, we believe that the CMA should first analyse and assess any LNG arrangements on a case-by-case basis before issuing any general guidance on such mechanisms and certainly before introducing a soft 'safe harbour' for LNGs.

For more information on the different characteristics and concerns with patent pools and LNGs, please see our Response to the CMA's Call for Inputs on the ATTBER and TTG.

Question 17: What impact would have it have on your business or those you represent if the Recommended TTBE0 applied to agreements establishing technology pools or LNGs? Please provide reasons for your answer.

The question appears to suggest that patent pools and LNGs are equivalent and provide the same impact on businesses. However, this is not the case.

We refer to our Response to the Call for Inputs where we explained the potentially significant negative impact that could result from the Recommended TTBE0 being applied to LNGs. LNGs raise serious and yet untested competition law concerns and may result in: (1) a buyers 'cartel; (2) additional (coordinated) hold-out opportunities for implementers and (3) implementers of standardised technology engaging in anti-competitive information exchange and/or collusion. As a result, including LNGs into the Recommended TTBE0 may have significant negative impact as LNGs may deprive companies of fair and reasonable compensation for the use of their technologies, undermining the ability and incentives to invest in further R&D of critical technologies, such as cellular standards.

The same considerations do not apply to pools, which have been tried and tested mechanism for providing one-stop-shop licensing option to implementers and have led to demonstratable pro-competitive effects on markets. Patent pools have existed for decades and competition authorities, as well as academic literature, have extensively analysed their competitive effects, which cannot be said for LNGs.

Question 18: What impact would have it have on consumers if the Recommended TTBE0 applied to agreements establishing technology pools or LNGs? Please provide the reasoning behind your answer.

We believe it would be wrong to presume that the impact on consumers would be the same for technology pools and LNGs. Please see our Response to the Call for Inputs and answers to Q16 and Q17 above about competition concerns related to LNGs. LNG may result in denying or delaying licensors of fair and reasonable compensation for their technology and undermining their ability to invest in R&D for future (standardised) technologies, which would deprive consumers of the best technologies and would likely lead to increased prices for new or improved products and services

Accordingly, there would be a potentially significant negative impact if the TTBE0 were to apply to agreements establishing LNGs, while this would not be the case for technology pools.

Question 19: Do you agree that the Recommended TTBE0 should retain the Assimilated TTBER's market share thresholds in respect of product markets but that in respect of technology markets, instead of having a market share threshold, the block exemption in

the Recommended TTBE0 would apply subject to the condition there be at least three other independently controlled technologies substitutable for the licensed technology? Please provide reasons for your answer.

Yes, in our Response to the Call for Inputs, we suggested that the CMA consider alternatives to the market share thresholds, such as the constraining role of credible competitive alternatives. However, we noted that even one single, or let alone two, substitutable technologies may generate intense competitive pressure on the parties.

Question 20: Would the approach proposed in question 19 be as effective as the existing market share threshold for technology markets in assessing the level of market power held by the parties to the agreement? Please provide reasons for your answer.

Yes, we believe it would be a more straightforward and effective way to assess the level of market power than with the existing market share thresholds for technology markets.

Question 21: Would the approach proposed in question 19 in practice provide greater legal certainty and be easier to apply than one which involves retaining the Assimilated TTBER's market share thresholds for both product and technology markets and providing further clarity about such thresholds in guidance? Please provide reasons for your answer.

Yes, for more information please see our Response to the Call for Inputs.

Question 22: Do you agree with the CMA's proposal that the Recommended TTBE0 should retain the two year grace period established in the Assimilated TTBER? Please provide reasons for your answer.

Yes.

Question 23: How would the CMA's proposal that the Recommended TTBE0 should retain the Assimilated TTBER's market share thresholds in respect of product markets but that in respect of technology markets, instead of having a market share threshold, the block exemption in the Recommended TTBE0 would apply subject to the condition there be at least three other independently controlled technologies substitutable for the licensed technology impact your business or those you represent? Please provide reasons for your answer.

b) Moderate positive impact

Question 24: How would this proposal impact your business or those you represent in comparison to the two other options discussed above with respect to market share thresholds? Please provide reasons for your answer.

b) Moderate positive impact

Question 25: How would this proposal impact consumers in comparison to the two other options discussed above with respect to market share thresholds? Please provide reasons for your answer.

b) Moderate positive impact

Question 26: How would the CMA's proposal that the Recommended TTBE0 should retain the two year grace established in the Assimilated TTBER impact your business or those you represent? Please provide reasons for your answer.

b) Moderate positive impact

Question 27: Do you agree with the CMA's Proposed Recommendation that the Recommended TTBE0 should retain the hardcore restrictions set out in Article 4 of the Assimilated TTBER, including with respect to active and passive sales restrictions?

Please refer to our Response to the Call for Inputs and to Q.10 above.

Question 28: How would the CMA's Proposed Recommendation that the Recommended TTBE0 should retain the hardcore restrictions set out in Article 4 of the Assimilated TTBER, including with respect to active and passive sales restrictions, impact your business or those you represent? Do you think that the block exemption would be used differently if the hardcore restrictions were altered? Please provide the reasoning behind your answer.

d) Moderate negative impact

Question 29: How would the CMA’ s Proposed Recommendation that the Recommended TTBER should retain the hardcore restrictions set out in Article 4 of the Assimilated TTBER, including with respect to active and passive sales restrictions, impact consumers? Please provide the reasoning behind your answer.

d) Moderate negative impact

Question 32: Do you agree with the CMA’ s proposal to recommend that the approach to the treatment of termination on challenge clauses in Article 5 of the Assimilated TTBER be retained in the Recommended TTBER? Please provide reasons for your view.

Question 33: If you disagree with this proposal, please explain how - if at all - the Recommended TTBER should deal with termination on challenge clauses, providing your reasons when doing so.

As explained in our Response to the Call for Inputs, the difference in treatment between IP rights and know-how as regards non-challenge clauses gives rise to intricate differentiation issues when determining the scope of lawful non-challenge provisions and the consequences of know-how litigation on the licensing of underlying IP. In addition, affording only limited protection against IP challenges in situations where the licensee gets a close look into the licensor’s IP portfolio may constitute a strong disincentive to license. The Assimilated TTBER’s position is also inconsistent with the more favourable approach to non-challenge clauses in the context of settlement agreements.

As regards termination clauses in case of IP challenge, this should always be possible in situations where the licensing agreement includes some form of commitment by the licensor to invest in the relationship with the licensee or when the licensee takes advantage of its position to damage the value of the IP (beyond merely challenging the IP in court).

Question 34: If the CMA were to recommend that the Recommended TTBER only exclude from the block exemption requirements on the licensee to provide exclusive grant backs of non-severable improvements, what impact would this have on your business and those you represent? Please provide the reasons for your answer.

d) Moderate negative impact

It is very difficult to distinguish between severable and non-severable improvements with sufficient legal certainty.

Question 35: If the CMA were to recommend that the Recommended TTBE0 only exclude from the block exemption requirements on the licensee to provide exclusive grant backs of non-severable improvements, how would this impact consumers? Please provide the reasons for your answer.

d) Moderate negative impact

Question 36: If the CMA were to recommend that the Recommended TTBE0 should provide block exemption to all termination of challenge clauses, how would this impact your business or those you represent? Please provide the reasoning behind your answer.

b) Moderate positive impact

Such an approach would provide more comfort for companies to share their technology without fear of retaliation and without the fear of being locked up in a relationship that has turned sour. If the harm is limited to the licensee's IP challenge, the licensor would unlikely have an incentive to terminate the agreement. On the other hand, the licensor may legitimately want to terminate if the licensee engages in other actions raising obstacles to the market dissemination of the technology (e.g., denigration, public campaigns, withholding investments in the relationship, etc.)

Question 37: If the CMA were to recommend that the Recommended TTBE0 should provide block exemption to all termination of challenge clauses, how would this impact consumers? Please provide the reasoning behind your answer.

b) Moderate positive impact

Question 40: Do you agree with the CMA's Proposed Recommendation that the Recommended TTBE0 should have a 12 year duration? If you disagree, do you have a suggestion for what the duration should be? Please provide reasons for your answer.

Yes