Competition and Markets Authority

United Kingdom

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Response to the CMA Consultation on Draft Guidance on the Application of the Chapter I Prohibition in the Competition Act 1998 to Technology Transfer Agreements

Executive Summary

Sisvel – one of the most experienced technology pool administrators globally and the only major pool administrator founded and headquartered in Europe – welcomes the opportunity, following its previous responses to earlier Competition and Markets Authority (CMA) consultations, to comment on the Draft Guidance on the application of the Technology Transfer Agreements Block Exemption Order 2026 (TTBEO) and the Chapter I prohibition in the Competition Act 1998 (CA98) to technology transfer agreements ('Draft Guidance').

We commend the CMA for its continued commitment to evidence-based, collaborative policymaking. Sisvel is pleased once again to contribute its expertise to this consultation and welcomes the CMA's open and collaborative approach to stakeholder engagement throughout this process.

Building on its previous submissions to the CMA during the evaluation of the technology transfer block exemption regime, Sisvel has focused on the consultation questions that are of greatest relevance to its activities: Questions 5.2 and 5.3 on technology pools and licensing negotiation groups (LNGs).

Overall, Sisvel considers the Draft Guidance to be a well-structured, thorough and sound basis for applying the Chapter I prohibition to technology transfer agreements in the UK. On the one hand, the Draft Guidance follows the revised EU Technology Transfer Guidelines ('EU TTGs') in its general structure and analytical approach; given that the market for technology transfers is international, Sisvel highly appreciates this effort at harmonisation. On the other hand, the Draft Guidance departs from the EU framework in several respects that are well adapted to the UK context. In Sisvel's opinion, the result is a more workable and flexible regime for transparent patent pool administrators.

The importance of this precision is underscored by pending UK Supreme Court proceedings related to the Avanci 5G vehicle platform, which directly concern contested fair, reasonable

and non-discriminatory (FRAND) licensing level and pool royalty questions. Sisvel does not comment on any ongoing litigation to which it is not a party; nor should this submission be read as taking any position on the facts, merits or appropriate outcome of such disputes. However, as a general point, guidance issued while relevant proceedings are pending should not pre-empt their result. Transparent patent pools are designed to comply with FRAND by operating under the principles of open participation, transparent licensing terms, independent essentiality assessment, safeguards against anti-competitive information exchange and non-discriminatory licensing. Because FRAND is a range, a transparent pool rate within this range should not be overturned merely because a court or authority might consider that another rate could also be FRAND.

Sisvel's principal recommendations are as follows:

- Preserve UK-specific beneficial departures from the EU TTGs.
- Preserve the exclusion of regulation and guidance on untested LNGs.
- Recognise the full breadth of pool efficiencies that accrue on both sides of the SEP licensing market, especially where the licensor or licensee is a small or medium-sized enterprise (SME).
- Protect FRAND-compliant pool rates from secondary challenge.
- Qualify the link between SEPs and market power, given the constraining effect of FRAND and of injunction availability.
- Remove the word 'all' from the pool safe harbour condition (paragraph 11.116(f)), so that the FRAND requirement cannot be misread as an obligation to license at the component or chip level rather than at the appropriate downstream product level.

1. About Sisvel

Sisvel has been operating as a patent pool administrator for over 40 years and employs more than 80 engineering, business and legal professionals. We are active in several standard-essential patent (SEP)-related industry sectors in the UK and globally, including cellular communication, wireless communication, digital video and audio coding technologies and broadband communication. Our more than 70 licensing partners range from major multinationals to SMEs and include research institutions, universities, product manufacturers, component manufacturers, infrastructure manufacturers and telecommunications operators, many of which are located in or have a substantial presence in the United Kingdom. Sisvel currently manages more than 1,500 essential patent families evaluated by independent third-party assessors and holds or manages over 800 UK patents across 500-plus patent families.

Sisvel's market-clearing function ensures that competition remains dynamic: patentees contributing to pools receive fair compensation and are encouraged to invest in ongoing technology development; while technology implementers can access and build upon groundbreaking innovation with full knowledge and comfort of the availability of a licence and its costs. This enables implementers to bring improved products and services to consumers at competitive prices. Through efficient and effective licensing of high-quality patents, the necessary incentives for R&D are created, fostering a self-sustaining cycle that funds further innovation and delivers advanced technologies to the market for the benefit of consumers.

As a pool administrator, Sisvel routinely uses the block exemption framework and its accompanying guidance for the establishment and management of pool licensing programmes, joint licensing arrangements and other forms of patent aggregation. We have voluntarily complied with the transparency standards contemplated in the transposed UK technology pool safe harbour for many years, well before their codification in guidance; and we welcome the CMA's efforts to provide legal certainty through the Draft Guidance following the entry into force of the TTBEO on 1 May 2026.

The administration of technology pools is a niche and complex business, involving intricate technical, commercial and legal dimensions. Sisvel is one of only a handful of entities worldwide with experience in administering such pools, built up over decades; a number of companies have contributed SEPs to these pools over the years, while a significantly greater number have been approached to obtain licences. This numerical imbalance should be carefully considered in the evidence-based approach of any technology transfer policy consultation, including the current one. It is with this perspective in mind that the substantive observations below are offered.

2. Question 5.2: approach to technology pools

Sisvel strongly supports the CMA's maintenance of dedicated guidance on technology pools and welcomes the overall analytical framework in paragraphs 11.98 to 11.129. We wish to highlight and commend those aspects of the Draft Guidance that diverge beneficially from the EU TTGs before making targeted recommendations for improvement.

2.1 General framework and positive clarifications

A comparison between the Draft Guidance and the EU TTGs reveals several key improvements with special relevance to transparent pool administrators. This is particularly significant because the EU technology pool safe harbour is already more demanding than equivalent guidance in other jurisdictions and takes a cautious approach to competitive safeguards. The CMA's refinements should therefore be preserved as deliberate UK-specific choices rather than treated as drafting deviations to be corrected in the name of alignment.

The first improvement is the flexible characterisation of patent pools in paragraphs 4.10 and 4.11. Patent pools do not always conform to a single contractual arrangement. Some operate through independent administrators; others involve joint sub-licensing arrangements or a more prominent role for one pool member acting as sub-licensor for the other contributors. By adopting a functional description, the Draft Guidance accurately reflects market practice and avoids chilling pro-competitive pooling models that differ in governance form but perform the same market-clearing function.

A second valuable clarification appears in paragraphs 4.18 and 4.19, where the Draft Guidance recognises that the exploitation of licensed technology rights does not necessarily require the integration of assets. Technology exploitation may also occur when a licence grants the licensee design freedom to operate. This point is important for SEP pools, where the principal benefit for many implementers is the prospective clearance of product designs against whole industry standards rather than the transfer of a single embedded technology right. Similarly, paragraph 11.25 rightly acknowledges that competition may still exist after the emergence of a *de facto* industry standard. This position is coherent with the CMA's own 2023 Guidance on horizontal agreements, which – similarly to the EU 2023 Horizontal Cooperation Guidelines – recognises that open, transparent and consensus-based standardisation can produce substantial pro-competitive effects.[1] In fact, standard adoption does not eliminate competition in implementation, adjacent technologies, complementary products, product features, quality or price.

[1] CMA, Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements (2023, CMA184), especially paras 9.4 and 9.17–9.22; European Commission, Communication from the Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2023/C 259/01) OJ C259/1, especially paras 439 and 451–455.

2.2 A more balanced presentation of pools' efficiencies

Paragraph 11.98 of the Draft Guidance rightly identifies several core pool efficiencies from the perspective of licensees: lower transaction costs, limitation of cumulative royalties and one-stop licensing. However, while these efficiencies are undoubtedly crucial, this list is not exhaustive.

A fuller account should also recognise that pools reduce licensing costs for contributors by consolidating patent management, essentiality assessment, compliance and licensing administration. By making licensing more predictable and scalable, pools increase uptake and improve the ability of innovators – including smaller patentees – to obtain remuneration for standardised technologies; therefore, they create a virtuous loop that enhances dynamic competition.

In addition to preventing double marginalisation and limiting cumulative royalties, as acknowledged by paragraph 11.98, pools afford heighted commercial certainty and can mitigate incentives for hold-out; although, from our practical experience, infringement nonetheless remains widespread. A transparent pool offers a single licence from a dedicated administrator at a publicly known or otherwise pre-established royalty rate. This reduces the informational and transactional reasons for implementers to defer licensing, while preserving their ability to challenge validity, essentiality or FRAND compliance in appropriate cases.

It also gives implementers advance notice of the relevant patent landscape, a known aggregate royalty rate and prospective clearance for participating portfolios. In SEP-intensive sectors, where implementers may be unable to identify in advance every patent engaged by a product design, this certainty supports pricing, product planning, R&D investment and timely market entry.

Another efficiency concerns access on both sides of the SEP licensing market, particularly for SMEs. For smaller patent holders, a pool can provide a practical route to market by allowing them to license through a collective structure administered on terms that are comparable to those available to larger patentees, rather than relying on repeated bilateral negotiations with major global implementers. This is especially vital for innovative SMEs, universities and research organisations that may lack the litigation budgets, commercial networks and business infrastructure to license on a standalone basis.

The same logic applies on the implementer side. A smaller implementer can benefit from comprehensive clearance through one licence, a known aggregate royalty rate and a clearer view of the relevant patent landscape, instead of having to negotiate separately with multiple SEP owners or to develop costly internal patent-mapping and FRAND valuation capabilities.

Pools therefore reduce search, valuation and transaction costs, support timely licensing and market entry and make SEP licensing markets more accessible to smaller businesses.

Sisvel has also supported SME access through targeted practical initiatives. It was among the initial signatories of the World Intellectual Property Organization (WIPO) Mediation Pledge by SEP holders to Internet of Things (IoT) SMEs, under which SEP holders commit to offer confidential WIPO mediation before bringing litigation or equivalent action against an IoT SME, with a standstill while mediation is ongoing and with the SEP holder bearing two-thirds of the mediator and administration fees, subject to a reasonable cap.[2] Sisvel has also launched a dedicated SME fund for its Cellular IoT pool, under which qualifying SMEs pay no royalties on their first 2,000 units sold during the first two years of the licence, with Sisvel covering the corresponding royalties to patent owners from a dedicated fund on a first come, first served basis while funds last.[3] Beyond FRAND-based licensing, these practical initiatives for smaller market entrants can reduce their initial monetary exposure, litigation risk and information asymmetries, while preserving standard transparent rates once the initial SME entry phase has passed.

These access effects are particularly pertinent to the UK innovation economy and to the CMA's objective of providing practical guidance with relevance for SMEs as well as larger firms. Similarly, public information initiatives such as the UK Intellectual Property Office (UKIPO) SEP Resource Hub are valuable in helping businesses to understand and navigate the SEP ecosystem. For that reason, the CMA's recognition of the pro-competitive and efficiency-enhancing role of transparent patent pools should also be reflected, where appropriate, in the UKIPO's SME-facing materials. The hub could usefully include clearer information on how properly structured pools can reduce search and transaction costs, provide aggregate royalty rate transparency, facilitate access for smaller licensors and offer implementers a practical route to broader SEP clearance. This would promote consistency across the UK's SEP policy framework without conflating the CMA's competition law assessment with the UKIPO's informational and signposting role.

These efficiencies collectively highlight why the pool safe harbour should be applied in a way that preserves, rather than weakens, the ability of transparent pools to reduce licensing fragmentation. This point is particularly important because hold-out is not limited to express collusion or formal LNG structures (see below). In SEP licensing, an implementer may continue using standardised technology while delaying the conclusion of a licence, leaving the patent owner with no option but to enforce its rights through costly and time-consuming

[2] WIPO, "WIPO Mediation Pledge by SEP holders to IoT SMEs", https://www.wipo.int/amc/en/center/specific-sectors/ict/frand/wipo_mediation_pledge_sep_to_smes.html.
[3] Sisvel, "Sisvel launches fund to help SMEs license cellular IoT patents"(18 December 2025) https://www.sisvel.com/news/sisvel-launches-fund-to-help-smes-license-cellular-iot-patents/.

litigation. Where a transparent pool offers publicly available FRAND terms, systematic delay by implementers can impose externalities on compliant licensees, weaken the pool's ability to internalise transaction cost savings and distort downstream competition by giving unlicensed firms an advantage against competitors that bear the cost of licensing. These distortions are most acute in cases of blatant infringement, where implementers import or sell counterfeit products with no genuine intention of concluding a licence. In such cases, effective enforcement mechanisms – including border measures and customs seizures – are a necessary complement to transparent pool licensing. Without them, the market-clearing function of the pool is undermined and the competitive level playing field that the safe harbour is designed to support cannot be maintained.

Finally, pools' efficiencies also explain why transparent pool rates should be understood in light of their institutional design. A pool rate is not a unilateral posted price in the ordinary sense. It is the product of a collective licensing compromise among multiple independent SEP holders and implementers, constrained by the pool's governance documents, contributor mandates, independent essentiality assessment, non-discrimination commitments and the need to secure market acceptance from implementers. Where a transparent pool satisfies the safeguards in paragraph 11.116 and its rate falls within the FRAND range, that rate should ordinarily be treated as FRAND compliant. A substantial downward determination of the pool royalty rate could not only reduce the administrator's margin but perhaps even shut down its operations altogether because the administrator may lack a mandate from contributors to license below the agreed royalty framework.

2.3 Innovation is not linked to IP rights validity

Paragraph 11.112 states that "[t]he inclusion of invalid intellectual property rights is liable to hinder, rather than promote, innovation". Sisvel agrees that this proposition is well placed in the context of no-challenge clauses, where competition law seeks to preserve incentives for licensees to challenge invalid rights and thereby prevent invalid patents from remaining artificially in force. In that setting, the statement reflects the conventional rationale that invalid rights should be capable of being challenged.

However, the same proposition is less well suited to the distinct context of selecting independent experts for essentiality checks in technology pools. Essentiality assessment is principally concerned with whether a patent is necessary to implement a standard, not with a final determination of validity. While validity may be relevant to the overall quality of a pool, an essentiality assessor does not normally perform the function of a court or patent office. A general statement that invalid IP may hinder innovation risks overstating the role of essentiality assessment and conflating *ex post* validity review with the *ex ante* incentive function of the patent system. Paragraph 3.05 of the Draft Guidance itself recognises that

innovators must be able to recoup not only the costs of successful R&D but also investments that do not ultimately succeed. In high-risk R&D environments characterised by trial and error, the patent system must preserve *ex ante* incentives to invest, including where some research projects later result in rights that do not survive validity review. This point does not prejudice the licensee's right to challenge validity, as the risk of research failure should not be shifted onto licensees through invalid patents, but should rather be addressed through patent law and contractual mechanisms.

Sisvel therefore recommends either moving this statement to the discussion of no-challenge clauses, where it fits more naturally, or qualifying paragraph 11.112 to read: "The intentional or systematic inclusion of invalid intellectual property rights into pools is liable to hinder, rather than promote, innovation." The final Guidance should also make clear that this point concerns validity and does not alter the separate function of independent essentiality assessment.

2.4 Safe harbour design, transparency and proportionate essentiality safeguards

The safe harbour itself is framed pragmatically. Paragraph 11.116(a) limits open participation to holders of "relevant technology rights". This limitation is important because open participation should extend only to technologies that could plausibly qualify for inclusion in a pool covering a defined standard or application. Requiring openness for all interested patentees, irrespective of relevance, would impose a compliance burden without advancing the competitive rationale of the safe harbour. The same practical orientation is reflected in paragraph 11.116(c), which requires "appropriate safeguards" to ensure that only essential technologies are pooled. Sisvel welcomes this process and design-oriented formulation. Essentiality checks can be robust, independent and transparent; but they cannot guarantee perfect outcomes in every case, especially given that standards and implementations evolve over time. A proportionate degree of leeway is therefore necessary to reconcile open participation with the need to maintain complementarity and essentiality within the pool.

This proportionality is particularly crucial in technology-intensive sectors. R&D in such sectors is characterised by sunk investment, trial-and-error development, rapid technological obsolescence and fast-moving product markets. A safe harbour requirement that treats every subsequent validity or essentiality imperfection as evidence of anti-competitive pool design would undermine innovation incentives and overstate what any *ex ante* guidance can predict. As the Draft Guidance recognises, the relevant competition law issue is whether the pool has adopted robust, independent and reviewable procedures with the scope to correct errors, rather than whether every check proves perfect with hindsight.

Sisvel also welcomes the use of the term "competitively sensitive information" in paragraphs 11.114 to 11.115 and in condition (d). This standard is more precise than the EU TTGs' broader

reference to “commercially sensitive information” because it focuses specifically on information whose exchange may harm competition, rather than on all proprietary or commercially valuable information. Paragraph 11.119 is likewise helpful in referring to changes in standards or in their implementation as triggers for reassessing essentiality. This formulation can capture both over-inclusion – where patents become obsolete as standards evolve – and under-inclusion, where new implementations or use cases reveal the relevance of patents that were not previously treated as essential.

These specific conditions (ie, open participation limited to relevant rights, proportionate essentiality assessment and competitively sensitive information safeguards) provide the foundation for the broader principle addressed below.

Paragraphs 11.116(b) and 11.116(c) require effective disclosure of the technology rights included in the pool and of the essentiality assessment methodology. The minimum disclosure standards in footnotes 225 and 226 mirror Sisvel’s longstanding voluntary practice: Sisvel publicly discloses the names of contributing patent owners, pooled patent families, relevant standards and versions, patent ownership and territorial scope, royalty rates, licensing terms and contract templates, and updates these lists regularly as new patents are submitted for essentiality evaluation.

The final Guidance should nevertheless confirm that these transparency obligations are proportionate. Under Paragraph 11.116(b), requests for updates should be reasonable in scope and frequency, and the specification “at reasonable intervals” should not be read as requiring real-time or continuous updating of large, dynamic portfolios. Under Paragraph 11.116(c), disclosure should relate to the methodology of essentiality assessment – not commercially sensitive contractual terms governing the relationship between pool administrators and their members, such as royalty allocation methodologies, which are legitimate trade secrets held in accordance with industry practice and competition law principles.

The same proportionality principle should apply to essentiality errors. The final Guidance should clarify that the safe harbour is not compromised by the occasional good-faith inclusion of a patent which is subsequently found not to meet the essentiality threshold, provided that the pool administrator maintains robust procedures for essentiality checks that are consistent with Condition 11.116(c) and addresses errors promptly when identified. Paragraphs 11.119 to 11.121 already recognise that essentiality may evolve outside the safe harbour; a corresponding clarification within the safe harbour itself would provide useful legal certainty and would reflect the reality that even a well-designed essentiality assessment cannot be error-free.

Where a pool raises competition concerns in an individual case – including concerns about the implementation of safe harbour conditions – the appropriate response is targeted and proportionate intervention in that case, not raising the safe harbour bar for all pools. This approach reflects the limits of *ex ante* regulation in fast-moving technology markets. Guidance cannot anticipate every future change in technology, standards, implementations, use cases or the scope of relevant patents. A patent that is essential at one point may become obsolete or may require reassessment as the standard and products evolve. A combination of proof-tested essentiality assessment, ongoing updating and situated *ex post* enforcement in concrete disputes is better suited to protect both innovation incentives and implementer rights than a blanket tightening of the pool safe harbour requirements.

Taken together, these safeguards reflect the broader principle that transparent pools can comply with competition law by design. Participation is voluntary; contributors remain free to license independently outside the pool; inclusion is subject to independent essentiality assessement; licensing is non-exclusive and FRAND based; and pool administration is structured to prevent the exchange of competitively sensitive information. This is why technology pools should be treated not as ordinary horizontal coordination among competitors, but as specialised IP licensing structures whose competitive assessment turns on complementarity, transparency, openness, essentiality controls and FRAND licensing-out.

As noted in Section 2.2, the corollary to this structural compliance is that enforcement action against implementers that decline to engage with a transparently operated, FRAND-compliant pool – including, where appropriate, border measures and customs seizures – should not attract suspicion from a competition perspective. Where a pool has satisfied the safe harbour conditions and offered FRAND terms, blatant infringement will not constitute a licensing dispute but rather a refusal to participate in a market mechanism that competition law itself promotes. Accordingly, effective enforcement in such cases is consistent with, and reinforces, the pro-competitive rationale of the pool safe harbour.

2.5 Safe harbour condition (f): "all potential licensees" and the licensing level question

Paragraph 11.116(f) of the Draft Guidance provides that, for the technology pool safe harbour to apply, the pooled technologies must be "licensed out to all potential licensees on fair, reasonable and non-discriminatory (FRAND) terms". This mirrors paragraph 286(f) of the EU TTGs. Sisvel supports the FRAND requirement as a condition for safe harbour eligibility. The difficulty lies in the wording "all potential licensees", which may be read as conflating FRAND licensing terms with the separate and contested question whether SEP licences must be offered at multiple levels of the supply chain. This ambiguity should be removed – preferably by deleting the word 'all' or by adding an express clarification that condition (f) does not prescribe the level of licensing.

There are at least five reasons for such clarification. First, standards deployment organisation (SDO) IP rights policies and voluntary FRAND undertakings do not generally require that SEP licences be offered at every level of the value chain. In Sisvel's view, they are more naturally implemented through licensing at a single level – usually the downstream product level – provided that implementers obtain effective access to the standardised technology on FRAND terms. Under the European Telecommunications Standards Institute (ETSI) Intellectual Property Rights Policy, for example, the relevant licensing commitment is closely connected to the manufacture and sale of standard-compliant equipment.[4] The joint Intellectual Property Rights Policy of CEN-CENELEC and the Common Patent Policy for ITU-T/ITU-R/ISO/IEC likewise do not establish an unqualified competition law obligation to license every intermediate component manufacturer.[5]

UK case law has not imposed an unqualified duty to license at every level of the value chain. Instead, it has developed a FRAND framework centred on the SEP holder's conduct, the implementer's willingness to take a FRAND licence and the court's assessment of the terms that are FRAND in the circumstances.[6] Courts in other prominent jurisdictions have pointed in the same direction. Most notably, the Ninth Circuit in *FTC v Qualcomm* rejected the proposition that an SDO commitment gives rise to an antitrust duty to license rival chip suppliers; while EU and German SEP case law likewise focuses on the parties' conduct within the FRAND negotiation framework rather than prescribing a mandatory licensing level in the value chain.[7]

Second, the phrase "to all potential licensees" risks transforming a non-discrimination principle into a supply chain-level mandate. FRAND prohibits unjustified discrimination between similarly situated licensees and paragraph 11.126 already addresses this concern *vis-à-vis* dominant pools. It does not follow that a pool must license both components and end products, or that a pool operating at the device level breaches FRAND commitments merely because another level of licensing could also be imagined. Read together with paragraph 11.124(b), which links refusal to license "to all potential licensees" with the strength of the pool's market position, condition (f) could otherwise be misread as implying

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[4] ETSI, Rules of Procedure: Annex 6, ETSI Intellectual Property Rights Policy (as amended 13 December 2023), 6.1, 15.4 and 15.6.

[5] CEN and CENELEC, CEN-CENELEC Guide 8: Guidelines for Implementation of the Common IPR Policy on Patents (and Other Statutory Intellectual Property Rights Based on Inventions) (2024); International Telecommunication Union, International Organization for Standardization and International Electrotechnical Commission, Common Patent Policy for ITU-T/ITU-R/ISO/IEC (1 January 2022).

[6] *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37, [2020] Bus LR 2422, paras 58–61, 90–91, 151–158; *Optis Cellular Technology LLC v Apple Retail UK Ltd* [2022] EWCA Civ 1411, [2023] RPC 6, 103–118; *Lenovo Group Ltd v Telefonaktiebolaget LM Ericsson (Publ)* [2025] EWCA Civ 182, 66–79.

[7] *FTC v Qualcomm Inc* 969 F 3d 974, 996–1005 (9th Cir 2020), 32-36; *Huawei Technologies Co Ltd v ZTE Corp* (Case C-170/13) EU:C:2015:477, 61–71; *Sisvel International SA v Haier Deutschland GmbH* (KZR 36/17) *Bundesgerichtshof*, 5 May 2020, 76–86.

that strong pools must license at the component level. That would go beyond established FRAND doctrine, would result in false positives in refusal to deal cases and would create uncertainty precisely where the Guidance should be providing legal certainty.

Third, a licence-to-all reading would impose an asymmetric regulatory burden on pools. Individual SEP licensors are not subject – under competition, contract or patent law – to a general obligation to offer licences at every level of the value chain. A pool administrator should not be placed in a less favourable position merely because it offers a transparent, standardised and collectively negotiated solution that reduces transaction costs for the market.

Fourth, this need for precision is particularly acute in the UK context. The pending Supreme Court proceedings in *Tesla v InterDigital* concerning the Avanci platform address, among other things, whether the courts of England and Wales may determine FRAND licence terms at the request of an implementer where an intermediary offers the licence as part of a pool or platform.[8] Sisvel does not invite the CMA to take any position on the merits of that litigation. The case nevertheless illustrates why the final Guidance should expressly leave the licensing-level question open rather than resolving it by implication. The Guidance should not contain language from which it could be inferred that FRAND pool licensing necessarily requires licences to be offered at every level of the value chain. This question is now before the UK's highest court; guidance issued while the proceedings are pending should not pre-empt the answer. Where a pool has been established based on a particular licensing level and a corresponding royalty architecture, a requirement to license at a different level of the value chain may require more than a contractual adjustment by the administrator. It may alter the business compromise on which the pool was formed and exceed the mandate granted by participating SEP holders.

Fifth, from an economic perspective, licensing at a single level in the value chain for a particular licensed product or field of use is also more efficient. The European Commission SEP Expert Group has explained that single-level licensing reduces transaction costs, the risk of 'double dipping' and the risk of under-compensation where potential licensees at different levels seek to push the royalty burden elsewhere.[9]

Requiring pools to offer component-level licences in addition to device-level licences would oblige them to identify, track and contract with a significantly larger population of licensees, including component manufacturers that often do not know the destination and use of every component they sell. It would also impose substantially higher and often unworkable

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[8] *Tesla v InterDigital Patent Holdings/Avanci* UKSC/2025/0058 (Supreme Court, on appeal).

[9] Justus Baron and others, "Groups of Experts on Licensing and Valuation of Standard Essential Patents 'SEPs Expert Group' Contribution to the Debate on SEPs" (EU, 2021), 11–12.

reporting and audit obligations, multiply double-dipping risks, necessitate extensive netting mechanisms and fragment the pool's licensing market. These effects would undermine the efficiencies that justify the pool safe harbour: one-stop licensing, reduced aggregate royalties and lower transaction costs. The final Guidance should therefore confirm that condition (f) does not require licensing at any particular level of the supply chain, and that pool administrators retain discretion to determine the appropriate licensing level, in accordance with FRAND and established industry practice.

2.6 Key recommendations on pools

- Acknowledge in paragraph 11.98, alongside licensee-side efficiencies, that pools also reduce licensing and administration costs for contributing patentees, including SMEs, universities and research institutions.
- Reflect the CMA's approach to transparent patent pools in UKIPO SME-facing materials (eg, the SEP Resource Hub).
- Either relocate the statement that "inclusion of invalid intellectual property rights is liable to hinder, rather than promote, innovation" to the section on no-challenge clauses or qualify it to read: "The intentional or systematic inclusion of invalid intellectual property rights into pools is liable to hinder, rather than promote, innovation."
- Delete the word 'all' from condition (f) in paragraph 11.116, so that it reads: "the pooled technologies are licensed out to potential licensees on fair, reasonable and non-discriminatory (FRAND) terms"; subordinately, add an express clarification that condition (f) does not prescribe any particular level of licensing within the supply chain.
- Confirm that a pool rate that satisfies the conditions in paragraph 11.116 and falls within the FRAND range should ordinarily be treated as FRAND compliant for competition law purposes, noting that a substantial downward determination of a compliant pool rate risks undermining the pool's ability to operate within its licensing mandate.

3. Question 5.3: the CMA's proposal not to provide specific guidance on LNGs

Sisvel strongly supports the CMA's decision not to include specific guidance on LNGs in the Draft Guidance. In Sisvel's view, the absence of such guidance is the most consequential positive divergence from the EU TTGs and one that the CMA should maintain in its final Guidance. Sisvel welcomes the CMA's open and responsive approach, including its recognition of the concerns regarding the potential risks of LNGs and their still-untested nature.

3.1 Technology pools and LNGs are fundamentally different arrangements

A clear distinction must be maintained between technology pools and LNGs. Technology pools aggregate *complementary* patent rights held by owners that are not technology competitors in respect of the pooled rights. The pro-competitive effects of pools (ie, reduced transaction costs, lower aggregate royalties, one-stop licensing) derive precisely from this complementarity and from the structural absence of direct competition among pool contributors in respect of the pooled technologies. LNGs share none of these structural features.

LNGs, by contrast, are groups of competing implementers that jointly negotiate the price and other conditions of licences with individual SEP holders or pools. LNG members are competitors in the product market; their coordination is directed at a key parameter of competition – that is, the price at which they acquire licensed technology.

Several structural features reinforce this distinction. First, pool members (including administrators that contribute to their pools) are bound by FRAND licensing commitments at both the contractual and competition law levels.[10] LNGs have no equivalent structural FRAND constraint; their members aim to concert purchasing prices and other licensing conditions without any FRAND boundary. Second, pool administration is a one-to-many operation: the administrator sets terms once and implements licensing consistently across the licensing market. LNG administration is by nature iterative and two-layered: it requires continuous internal alignment among competing implementers and repeated negotiation with each individual licensor, creating structurally greater and more frequent opportunities for the exchange and inference of competitively sensitive downstream information. Third, a technology pool must secure market acceptance for the licence that it offers; an LNG faces no analogous constraint, since its members are typically already exploiting the technology before any licence has been concluded. Fourth, as well highlighted by the draft Guidance, pools have been deeply and extensively treated in literature and jurisprudence, as well as applied in market practice; while LNGs are a fully untested mechanism.

3.2 LNGs are not ordinary joint purchasing groups

The competition assessment of LNGs must not simply transpose the analytical framework that applies to ordinary joint purchasing groups. The two arrangements differ in at least four respects that are directly relevant to competitive analysis: the excludability of the subject matter; the scope for confidentiality of purchasing arrangements; differences in the market definition; and the distribution of market power between buyers and sellers.

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[10] ETSI Intellectual Property Rights Policy, Rule 6.1bis (transfer of ownership of essential IP rights).

First, ordinary joint purchasing groups trade assets that are tangible, rivalrous and withholdable: if no agreement is reached, suppliers can simply refuse supply.[11] SEP licensors cannot 'withhold supply' in the same sense because an infringement can continue until the licensor has obtained and enforced an injunction, which is a costly and time-consuming process. The capacity constraint and reallocation logic that justifies the joint purchasing framework for tangible goods therefore does not apply to technology licensing markets.

Second, ordinary joint purchasing groups can maintain the confidentiality of their purchasing arrangements *vis-à-vis* non-members, which reduces the risk of coordinated spillover effects. LNGs cannot rely on equivalent secrecy without undermining the licensor's ability to demonstrate and defend against non-discrimination compliance through comparables.

Third, the definition of the relevant technology markets in LNG cases requires a sound analysis of market segments and technology use cases, and – as already highlighted in Sisvel's previous replies to the CMA's consultations – cannot simply mirror the criteria adopted to define a relevant purchasing market.

Finally, the strongest efficiency case for joint purchasing groups is that dispersed and small buyers face genuine bargaining disadvantages. In many SEP contexts, however, large implementers already have *de facto* leverage because they can continue using the technology unless and until constrained by litigation outcomes; aggregation in an LNG may therefore amplify buyer power rather than correct an asymmetry.

3.3 Competition risks associated with LNGs

Before addressing these risks, it is important to define their scope. Sisvel does not suggest that every disagreement over FRAND royalties raises competition law concerns. Ordinary disputes about whether a proposed royalty is FRAND are properly resolved through contract, patent and FRAND adjudication. The competition concern arises where rival implementers coordinate their conduct so as to cap royalties, exchange sensitive licensing information, impose collective standstills or otherwise suppress remuneration below the FRAND range. At that point, the issue is no longer a bilateral FRAND dispute but rather a potential buyer-side restriction of competition.

The competition risks associated with LNGs are not speculative. Senior US Department of Justice leadership has publicly characterised LNGs as unlawful buyer cartels under US antitrust law.[12] The European Commission's own Impact Assessment Report accompanying

[11] CMA, Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements (2023), paras 6.40ff.

[12] See US Department of Justice, "Deputy Assistant Attorney General Dina Kallay Delivers Virtual Remarks at the 2025 Chatham House Competition Policy Conference on Competition in the Airline Industry", press release (20

the revised Technology Transfer Block Exemption Regulation (TTBER) and EU TTGs notes that LNGs may be used to exert buyer power, drive royalty rates below competitive levels and coordinate hold-out. The Directorate General of Competition has further acknowledged that it is not aware of any LNGs actually operating on the market, so their real-world effects remain unknown and debated.[13] The CMA itself has reached the same conclusion on the domestic evidence: the consultation document accompanying the Draft Guidance notes at paragraph 2.20 that LNGs have emerged relatively recently as an issue in technology transfer licensing; that the CMA has no institutional experience in assessing LNG arrangements; and that, to the best of its knowledge, no LNGs are currently operating in the UK. On this basis, the CMA concludes that case-by-case assessment is more appropriate at this time. The CMA's evidentiary position strongly supports maintaining a cautious approach in the final Guidance. Where a proposed arrangement is novel and empirically untested at both the EU and UK levels, and involves coordination among competing implementers on parameters such as the licensed product, the licensing level and the maximum acceptable royalty, the appropriate response is case-by-case assessment rather than *ex ante* guidance that could be read as encouraging the formation of LNGs.

These competition concerns arise first because LNG members are competitors in the product market and jointly determine the maximum royalty that they are prepared to pay for standardised technologies. Their coordination therefore concerns a key input cost and, depending on the circumstances, may amount to horizontal price coordination. The same process may require or facilitate the exchange of competitively sensitive information, including production volumes, licensing strategies, cost structures, forecasts and litigation positions. Such information exchange may spill over beyond the immediate licensing negotiation and affect downstream competition.

A further concern is strategic hold-out. An LNG can enable its members to coordinate delay in taking licences, prolonging the unlicensed use of patented technology and depriving innovators of royalty revenues while litigation is ongoing. This risk is particularly acute in SEP licensing because of the intangible asset nature of licensed technologies and the consequential fact that the technology is often already being used before a licence is

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November 2025), https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-dina-kallay-delivers-virtual-remarks-2025-chatham; Florian Mueller, "EU Commission's comfort letter to Licensing Negotiation Group 'concerning and unusual', irreconcilable with competition law principles" (ip fray, 10 October 2025), https://ipfray.com/u-s-deputy-antitrust-chief-eu-commissions-comfort-letter-to-licensing-negotiation-group-concerning-and-unusual-irreconcilable-with-competition-law-principles.

[13] Commission Staff Working Document, Impact Assessment Report accompanying Commission Regulation (EU) .../... on the application of Article 101(3) TFEU to categories of technology transfer agreements and Communication from the Commission, Guidelines on the application of Article 101 TFEU to technology transfer agreements, SWD(2026) 114 final, 16 April 2026, pp 15–17, 48–51 and 55–56.

concluded, leaving SEP holders with the sole remedy of court action to prevent unlicensed use.

In addition, monopsony and collective dominance risks can arise. Especially where LNG members possess significant collective buyer power, the same coordination may suppress royalties below FRAND levels, weakening incentives to invest in R&D and to contribute innovations to standards.

Sisvel accepts that the EU TTGs identify possible efficiencies from LNGs, including reduced licensing transaction costs and the pooling of implementer expertise on validity, essentiality and valuation. These efficiencies may be plausible for a narrow category of informal cooperation among smaller implementers that individually lack the technical and legal capacity to evaluate SEP portfolios. However, they are far less persuasive where an LNG is organised by or for major global implementers with sophisticated IP departments, substantial bargaining resources and established downstream positions. Apart from LNGs of SMEs, the likely effect is not to correct an information asymmetry but rather to aggregate buyer power. Any claimed transaction cost savings should therefore be demonstrated with evidence rather than assumed as a basis for *ex ante* guidance.

3.4 The case-by-case approach is analytically sound

The technology rights market, and in particular the licensing of SEPs, remains dynamic and is functioning smoothly through a combination of private ordering, FRAND commitments and *ex post* adjudication where disputes arise. In the event of a conflict, case-by-case analysis through courts and competition enforcement has proven capable of addressing concrete concerns. This experience in no way equates to the kind of persistent market failure that would justify *ex ante* guidance specifically designed to facilitate LNGs.

The conditions that would normally justify more prescriptive *ex ante* guidance are not present. There is no evidence of a persistent market failure in technology licensing markets that LNGs would solve; there is no established competition and/or contractual practice or literature providing a reliable empirical base; and there is no robust economic understanding of their impact on the related market – especially the point at which LNG market power becomes competitively harmful in SEP-intensive markets. These markets involve features that are fundamentally different from ordinary purchasing markets, including intangible rights, FRAND commitments and pre-licensing use of technology. Rushed guidance that is not grounded in established principles would risk becoming a policy failure with far-reaching consequences.

3.5 LNG efficiencies under the Section 9 CA98 four-limb test

To the extent that LNG efficiencies are asserted in an individual case, they should be tested rigorously against the cumulative requirements of Section 9 of the CA98. In practice, many LNG arrangements are likely to encounter difficulties under each limb.

On the first limb (objective efficiencies), claims based on expertise pooling, benchmarking or process standardisation may conflate genuine transaction cost savings with redistribution of contractual surplus; they are not necessarily objective improvements in static or dynamic efficiency that are inherent to the arrangement and independently verifiable. On the second limb (indispensability), the test is not self-evidently satisfied because transparent pool licensing and bilateral negotiations constitute safer alternatives from a competition law perspective. On the third limb (that a fair share of the objective efficiencies accrues to consumers), pass-on is uncertain: fixed transaction cost savings may not be passed on absent strong downstream competition; while royalty discounts achieved through buyer power are not automatically pro-consumer and may reduce dynamic efficiency by suppressing innovation incentives. On the fourth limb (no elimination of competition), LNGs may weaken residual competition both upstream, by depressing licensing returns or facilitating the exclusion of non-LNG members, and downstream, by introducing a uniform cost for a key input that facilitates parallel conduct.

Ultimately, excessively permissive treatment of LNGs threatens to undermine the free market mechanism for FRAND licensing, potentially causing royalty rates to fall to sub-FRAND and sub-competitive levels. This would leave SEP holders and pool administrators unable to recoup the high costs of R&D and would severely disincentivise investment in innovative technologies and contribution to standards. Ultimately, such harm to innovators and their partners would result in less choice, lower quality and higher prices for consumers.

3.6 Key recommendations on LNGs

- The decision not to include specific guidance on LNGs should be maintained.
- Should the CMA revisit the question of LNG guidance in future, this should be confined to narrow SME-focused arrangements where genuine bargaining disadvantage can be demonstrated and the risk of collective hold-out is structurally limited.
- Any future guidance on LNGs should maintain a clear and consistent analytical distinction between technology pools and LNGs. It should not be incorporated within the technology pools section of the Guidance and should not draw its analytical framework from the pool safe harbour.
- If guidance on LNGs is developed, it should be grounded in a careful, evidence-based assessment of the conditions under which LNGs generate genuine, verifiable

efficiencies, and should not simply transpose the joint purchasing framework into a technology licensing context.

4. Question 5.4: other comments on the Draft Guidance

4.1 Regulatory continuity and cross-border alignment

Sisvel welcomes the CMA's prompt publication of the Draft Guidance following the entry into force of the TTBEO on 1 May 2026, which mitigates the uncertainty created by the expiry of the Assimilated TTBER. Sisvel also welcomes the plan to supplement the final Guidance with a short, accessible guide for businesspeople, which will be particularly valuable to smaller innovators and SMEs.

While Sisvel strongly supports the CMA's objective of maintaining close alignment with the EU TTGs in areas of substantive agreement, it equally supports the targeted departures discussed in this response. The value of the UK framework lies not simply in EU alignment but also in its capacity to address the specific concerns of transparent pool administrators in a clear, proportionate and operationally workable manner. Where the CMA has identified a better solution for the UK context, as well as for a market that is global in nature, it should be encouraged to preserve it.

4.2 The three-technology test (Article 5 of the TTBEO)

Sisvel welcomes the TTBEO's introduction of the alternative 'three or more independently controlled competing technology rights' test alongside the market share thresholds and the corresponding guidance in paragraphs 5.25 to 5.31 of the Draft Guidance. This test addresses the well-known methodological difficulties of assessing technology markets while preserving a viable proxy for competitive constraint. The operationalisation of 'independently controlled competing technology rights' by reference to substitutability, characteristics, royalties, commercial strength and intended use is well calibrated. In keeping with its previous statements on the relevant market definition flaws, Sisvel further suggests that the same principles – especially the focus on realistic and sufficiently immediate alternatives for licensees – can usefully inform the definition of relevant technology markets outside the safe harbour context.

4.3 Paragraph 11.12: market power and SEPs

Paragraph 11.12 draws a relatively direct link between ownership of SEPs and market power. Sisvel would encourage the CMA to qualify this formulation. Consistently with the established and recently confirmed approach of the United States Department of Justice, which is equally

valid in Europe,[14] standard essentiality may be relevant to market power, but it should not be treated as sufficient in itself. The competitive significance of a SEP depends on the availability of substitutable technologies at the time of standard adoption, the scope and practical effect of the FRAND commitment, the willingness of the implementer to take a FRAND licence and the availability of injunctive relief. FRAND commitments and UK FRAND jurisprudence substantially constrain the ability of a SEP holder to obtain injunctions against implementers that are genuinely willing to take a licence on FRAND terms.

In conclusion, the final Guidance should therefore avoid suggesting that SEP ownership automatically confers market power and should instead present standard essentiality as one factor in a more qualified, fact-specific assessment. A more calibrated approach to both market definition (informed by the three-technology test principles discussed in section 4.2) and market power would also reinforce the efficiencies case for transparent pools set out in section 2: pools that operate within the FRAND range and that satisfy the safe harbour conditions in paragraph 11.116 should be assessed against the competitive landscape as it actually exists, not against a presumption of dominance derived from SEP status alone.

4.4 Other key recommendations

- Confirm that the principles underpinning the three-technology test in paragraphs 5.25–5.31 (substitutability, commercial strength, royalties, intended use) can also inform the definition of relevant technology markets outside the safe harbour context.
- Qualify the formulation in paragraph 11.12 to avoid suggesting that SEP ownership automatically confers market power.

[14] See Dina Kallay, "Fueling Innovation: Antitrust and Intellectual Property in Support of American Technological Leadership" (2026) Remarks at the Center for Strategic and International Studies LeadershIP, https://www.justice.gov/opa/speech/fueling-innovation-antitrust-and-intellectual-property-support-american-technological, citing the statement of interest of the United States filed in *Disney Enterprises, Inc v InterDigital, Inc*, No 25-cv-996 (D Del, 6 October 2025); CJEU Case C-170/13 *Huawei v ZTE* Opinion of AG Whathelet EU:C:2014:2391, paras 57–58 and Judgment EU:C:2015:477, para 43.