Panasonic

June 10, 2026

Opinion Brief

In response to the CMA's consultation on
draft guidance (Draft Guidance) on the application of the Competition Act 1998 (Technology Transfer Agreements Block Exemption Order) 2006 (the TTBEO) and
the Chapter I prohibition in the Competition Act 1998 (CA98) to technology transfer agreements

On behalf of

Corporate Intellectual Property Division,
Panasonic Holdings Corporation

Country of origin: Japan

[redacted]

Dear Sirs and Madams,

Panasonic would like to congratulate the UK CMA (hereafter, denoted as "the CMA") for its devoted efforts and the resulting proposals which attempt to address issues in relation to the captioned consultation. Panasonic would also like to express its sincere gratitude to the CMA for providing an opportunity to submit our opinions in relation to the captioned consultation. Through these activities, Panasonic wishes to make a contribution as a long-term contributor to the standard ecosystem and a participant in the UK and the global market to assist the CMA's effort to evaluate its guidance on technology transfer agreements ("Draft Guidance") and support fair competition in the market. Panasonic's comments focus, in particular, on SEP pools' safe harbour and LNG frameworks.

1. Comments on consultation question 5.2, "on the CMA's proposed approach to technology pools"

Panasonic appreciates the CMA for addressing the competition law assessment of technology pools.

At the same time Panasonic would like to stress that any final Guidance should affirm that well-structured technology pools and their FRAND licensing frameworks are presumptively pro-competitive, as they may facilitate the dissemination of technology and reduce transaction costs where they enable the joint licensing of complementary technologies, and would like to strongly suggest that any final Guidance should avoid putting any additional burden on them.

In particular, Panasonic would like to deliver its opinion on "transparency," "double dipping," and "tie-in" issues as follows.

i. With respect to transparency on and disclosure of pool technology rights

Paragraph (11.116) (b) of the Draft Guidance provides that "the technology rights included in the pool are disclosed in an effective manner to existing and potential licensees."

Panasonic generally supports the CMA's assessment. At the same time, Panasonic notes that changes in technology rights as disclosed through patent pools must be accepted as a matter of commercial reality. New patent owners join patent pools and new patent rights are granted (and added) at different stages throughout the operation of a patent pool. In addition, patent evaluation by pool designated experts can be a costly and time-consuming endeavour and resource constrains may hinder immediate identification of relevant technology rights. That said, it is important to recognize that pool licensing agreements generally provide that, even without express disclosure, patents owned by all participating licensors that are essential to the relevant technology (even if only later found to be essential), shall be covered by and be subject to the license. This contractual framework has been considered to be commercially viable and fully addresses the concern over possible incomplete transparency.

ii. With respect to "double dipping"

Paragraph (11.116) (f) of the Draft Guidance notes "the pooled technologies are licensed out to all potential licensees on fair, reasonable and non-discriminatory (FRAND) terms, **including safeguards to ensure that licensees are not charged more than once for the same technology rights.**"

Panasonic generally supports the CMA's assessment. Panasonic notes, however, that a patent pool is only one of the licensing options and that patent pool licenses and bilateral licenses do co-exist within the industry. To that end, Panasonic recognizes that licensing of **"overlapping patent rights"** can and does occur through normal operations in the market (a.k.a. **"double dipping"** situation). To address such situation, netting processes provided under established patent pool rules serve as existing commercial mechanisms that help address potential overlapping licenses. Accordingly, once the right holder and the licensee identify potential overlapping licenses and they are prepared to resolve the issue in good faith, equitable solutions can usually be found and there will be no long-term adverse impact on a fair competitive environment.

Panasonic has experienced overlapping scope of patent licenses in the past. There are two scenarios under which licensing of overlapping patent rights can occur: 1) an overlapping license scope between a technology pool and a bilateral license; and 2) an overlapping license scope between (or among) plural technology pools (*i.e.*, when a licensor chooses to participate in two or more patent pools having similar license scope). Under either context, established procedures will provide opportunities for right holders and licensees to provide relevant information and seek assistance from the pool administrator to take effective measures such as **pre-netting and/or post-netting** to take equitable steps to provide any necessary royalty compensation for any overlapping scope of patent licenses between SEP holders and licensees.

As described above, pre-netting and/or post-netting are procedures provided for under established patent pool rules. These procedures are conducted and exercised between the two parties (*i.e.,* the SEP holder and the licensee) who hold the licensing information and facilitated with cooperation and assistance by patent pool administrators. As information about bilateral licenses would generally not be available to patent pool administrators, it is the principal responsibility of the parties, not the patent pool administrator, to identify potential overlapping license issues and to initiate the netting procedures. Therefore, it seems inappropriate to summarily conclude that there is a problem under competition law simply because there is no provision (in different terms, **safeguards**) included in a patent pool licensing (agreement) that ensures that licensees are not charged more than once for the same technology rights. From this point of view, Panasonic respectfully proposes clarifying edits to the wordings of Paragraph (11.116) (f) of any final Guidance, as exemplified below, so as to avoid the misapprehension that for a patent pool license it should be the pool administrator that is responsible for taking measures against the occurrence of **"double-dipping."**

Proposed edits to Paragraph (11.116) (f):

"*(f)* the pooled technologies are licensed out to ~~all~~ potential licensees on fair, reasonable and non-discriminatory (FRAND) terms, including ~~safeguards to ensure that licensees are not charged more than once for the same technology rights~~ functional mechanisms to assist licensees to address potential duplicate license issues;"

iii. With respect to tie-in (Inclusion of non-essential patents such as important complementary technology patents in the pools)

Paragraph (11.117) of the Draft Guidance provides that "where significant complementary but non-essential technologies are included in a pool, there is a risk of foreclosure of third-party technologies. Once a technology is included in the pool and licensed as part of a package, licensees may have limited incentives to license competing technologies outside the pool, particularly where the royalty for the package already covers a substitute solution."

Paragraph (11.117) of the Draft Guidance further provides that "the inclusion of technologies that are not necessary to produce the relevant product or carry out the relevant process, or to comply with a relevant standard, may also **force licensees to pay for technology they do not require. Such inclusion may amount to collective bundling.**"

Panasonic notes, however, that complementary technologies covered by pools are usually "commercially essential technologies," that are not technically essential for implementing the standard but cover cases where there are no other commercially viable alternatives in terms of cost and/or access. Covering these important complementary technologies in pools is effective in promoting the dissemination of the standard and expanding the market and does not hinder a fair competitive environment.

Panasonic therefore suggests that the CMA should include in Paragraph (11.117) also other factors that should be taken into account even if the pool has a significant position on the relevant market. In order to assess whether there is any restriction of competition, it is indeed important to assess whether compensation for such complementary technology is compulsory or optional, and whether there is a payment for a technology that is not necessary for the purpose of producing the product(s) or carrying out the process(es) conforming to a standard.

2. Comments on consultation question 5.3, "on the CMA's proposal not to provide specific guidance on LNGs"

Panasonic appreciates and welcomes the CMA for not having included specific guidance on LNGs in the Draft Guidance. Panasonic agrees that including specific guidance on LNGs in any final Guidance is premature.

Having said that, Panasonic is aware that both the EC and the German Federal Cartel Office have provided some guidance on the assessment of LNGs under their relevant competition regulations and that a US DoJ official has delivered a remark that the Automotive LNG may constitute illegal buyers' cartels under US antitrust law[1]. Panasonic sees serious issues as to possible anti-competitive effects which might be brought by LNGs even if complying with such assessments. Hence, Panasonic would like to state some concerns as follows for the purpose of reference for possible future studies on LNGs by the CMA.

i. With respect to the market share threshold

In the EC's Guidelines on the application of Article 101 of the Treaty of the Functioning of the European Union to technology transfer agreements published on 21 April 2026 (hereinafter "the EC Guidelines")[2], Paragraph (315) provides "as the negotiation of licenses by technology implementers is a form of purchasing, **the assessment of substitutability focuses on the alternatives available to licensors of the technology**, rather than on the alternatives available to the implementers." (emphasis added)

In addition, on July 9, 2025, the EC issued a Guidance on the creation of a licensing negotiation group in the automotive sector for the licensing of standard essential patents (Case AT.40979 –Guidance –Automotive LNG)[3] (hereinafter "the ALNG Guidance Letter"). In paragraph (30) (a), the EC concluded that the ALNG is permissible if the "**ALNG and its negotiation groups negotiate licences for standards that are not automotive-specific and in respect of which the combined market share of the ALNG members does not exceed 15% of the total demand for the SEPs or standards concerned.**" (emphasis added)

Panasonic respectfully submits that while standardized technologies are traditionally utilized by products that are interchangeable, for IoT implementations, standardized technologies are fundamental to distinct products and services that enable the creation of a variety of commercial activities. To that end, in order to assess the impact of any LNG, it is important to concretely assess the technology market(s) and whether particular conditions apply, for instance for particular products/sectors, which makes it appropriate to define a narrower technology market. This is particularly true where distinct (*i.e.*, non-interchangeable) products exist, where subject SEPs or standards provide different benefits to distinct products and enable different business models in the market, and/or where business practices (e.g., supply chains) differ among the distinct products. Accordingly, Panasonic believes that it is appropriate to examine anti-competitive effects of any LNG by defining the relevant technology markets and the corresponding share of demand or "market share" within the context of the particular market segment.

[1] https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-dina-kallay-delivers-virtual-remarks-2025-chatham
[2] https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/ttber_en
[3] https://ec.europa.eu/competition/antitrust/cases1/202536/AT_40979_104.pdf

In the case of communication technologies (4G, 5G, etc.), distinct products (smartphones, base stations, routers) and services (cellular networks) exist in the market. These products and services are distinct from automotive products, and each having an established licensing practice in the industry. By oversimplifying the definition of "technology market" using the entire communication technology market, the "market share" of the automotive sector is artificially lowered. To that end, the situation where **the combined market share of LNG participants does not exceed 15% of total demand for the relevant SEP or standard technology, therefore, the market power is limited under the permissible level** is arbitrary defined without consideration of the appropriate market context. Permitting LNGs to exist under such definition does not accurately take into account the buying power of the LNG and could enhance the opportunities to operate "buyers' cartels" at the expense of SEP holders and good faith implementers.

Looking at the example of the ALNG, smartphone manufacturers, base station manufacturers, communication service providers do not offer interchangeable products as automobile manufacturers and do not compete in the downstream product market. Effectively, the use of the technology and the market conditions for licensing are very different from product category to product category. In order to correctly assess the effect of the ALNG and whether the ALNG allow the parties to exercise joint buying power, it is important to define the affected technology markets, such as the automotive sector. If "share of demand" is properly defined for particular use case or product category (i.e., in the automobile market), it would have been clear that the total share of demand of the proposed ALNG participants would exceed 15%, indicating that restrictive effects on competition could potentially exist or subsequently develop also in the affected technology market.

ii. With respect to similarities and differences between LNGs and collective purchasing Agreements

Another issue we would like to highlight is that LNGs and Joint Purchasing Groups are not comparable for the following reasons.

Paragraph (315) of the EC Guidelines provides that "**as the negotiation of technology licences by implementers is a form of purchasing,** the assessment of substitutability focuses on the alternatives available to suppliers of the technology, rather than on the alternatives available to the implementers". (emphasis added)

On this point, although paragraph (300) of the EC Guidelines provides that "Chapter 4 of the Horizontal Guidelines (Joint Purchasing) does not apply to the assessment of LNGs that are covered by this guidance.", the EC previously sought public commentary[4], as to whether the guidance on joint purchasing agreements provided in Chapter 4 of the Horizontal

[4] See Consultation regarding revision of TTBER and Guidelines (Ref. Ares (2025) 761131 - 31/01/2025), question 3-27, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14478-EU-competition-rules-on-technology-transfer-agreements-revision-/public-consultation_en

Guidelines[5] provides an appropriate analytical framework for assessing LNGs. In view of the above, Panasonic believes the EC may have relied on the guidance on joint purchasing agreements provided in the Horizontal Guidelines and concluded that it is an appropriate analytical framework for assessing LNGs and formed the belief that the negotiation of licenses by technology implementers is a form of purchasing.

Panasonic notes, however, from the business framework and competition point of view, collective purchasing agreements and LNGs are different on a very important point.

In a collective purchasing agreement, purchased goods are not delivered until certain business conditions are met. In particular, the purchaser cannot actually obtain the goods until agreement has been reached with the seller, and the seller accepts to hand over the goods.

In contrast standardized technologies can be accessed and implemented by products/services before the conclusion of a patent license agreement. Thus, in the case of an LNG, unlike the collective purchasing agreement, the implementers can conduct business activities (*i.e.*, access the market) before the conclusion of a license agreement, without the terms and conditions, including an appropriate royalty having been decided among the parties, and before payment of any royalty. In other words, the business framework follows in the order of business implementation before the parties even begin to engage in exchanges of considerations that lead to the formation, execution and performance of any license agreement.

It is well recognized that profit optimization is fundamental to free market economy. In this context, it follows that implementers (*i.e.*, potential members of an LNG) each having gained access to the standardized technologies, each having made no commitment to royalty terms, and each having not fulfilled any royalty obligation to access the standardized technologies and would be incentivized to reduce the royalty rate and/or delay the timing of royalty payment to optimize immediate profit. Thus, LNGs could create opportunities for or even encourage stakeholders within a particular market to collectively advance the business objective of profit optimization at the expense of SEP holders.

In this respect, the assumptions regarding the business implementation are completely different from each other. Given these differences, realistic concerns under relevant competition law do exist with regard to granting the “bargaining power” of collective bargaining rights to large companies by creating an LNG, such as was done by automotive companies by creating the ALNG.

[5] Communication from the Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements, (2023/C 259/01), paragraph 273 onwards.

iii. With respect to setting a cap on the license fee in a certain range of the sales price of the products

The EC Guidelines, in the final version, provide no "Safe Harbour" for LNGs. However, in the EC's draft Guidelines published on 11 September 2025 (hereinafter "the EC draft Guidelines")[6], Paragraph (326) (g) notes that "the licensing fees payable under technology transfer agreements negotiated through the LNG **do not exceed 10% of the sale price of the products** incorporating the licensed technology." (emphasis added)

As an operating company, Panasonic appreciates that the cost of IP, including license fees to access standardized technologies, should be managed at a reasonable level so as to enable commercial activities. This rational is sound because it enables commercial activities that promote the use of standardized technologies, a fundamental pillar of the FRAND aspiration.

On the other hand, another fundamental pillar of FRAND is to fairly reward technical contributors in a timely manner so that investments to future standards can be enabled. From that aspect, Panasonic believes it is reasonable to value access cost to a standardized technology in accordance with the benefits such technology brings to the particular product or service. For this reason, Panasonic fears that any kind of fee cap will be taken as the "de-fault" expected max license fee. Panasonic appreciates that the EC has stated in paragraph 327 of the EC draft Guidelines that for LNGs which fall outside, an individual assessment should be done and would ask that the EC further expands on this point to avoid that the safe harbour rules function as a constraint on incentives for innovation to secure that value considerations are proactively addressed by market participants.

Further, assuming that a cap is included, Panasonic would suggest that a further clarification is made as to what appropriate royalty base should apply, this is particularly relevant where there are participants from different levels of the value chain participating in a particular LNG.

Finally, as an example, the ALNG Guidance Letter allows both car manufacturers and component suppliers to participate in the ALNG. Presumably, this allowance may be rooted in the commercial practice in the automotive industry where contractual relationships exist among car manufacturers and component suppliers with respect to IP[7]. Thus, based on the EC draft Guidelines, the appropriate royalty can be, in theory, either USD $5000 (*i.e.*, for an automobile that costs USD $50,000) or less than USD $10 (*e.g.*, for TCU that costs less than USD $100). Such drastic differences in valuations (as permissible under the Guidance Letter and the EC draft Guidelines) can already cause deadlock in ALNG discussions and this would likely be exacerbated by contractual relationships governing IP in the automotive industry. To that end, Panasonic does not believe the EC's guidance (as permissible under the Guidance Letter and the EC draft Guidelines) would provide a constructive licensing

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202505024

[7] It is noted that such commercial relationships do not have direct nexus to the benefit standards provide to automotive products nor the commercial value standards enable in such products.

solution that would lead to speedy conclusion of SEP licenses that reflect the value of standards to automobiles.

On the other hand, the value of standards to automobiles may be better assessed through analysis of what consumers attribute to having the safety, convenience, and leisure features enabled by connectivity in vehicles. Thus, a reasonable royalty base to consider may be the monthly subscription costs over the lifetime of the vehicle. For example, with conservative assumptions that cost of having access to connectivity in an automobile is USD $10 per month and that a consumer will use a car for 5 years, a royalty base of $600 can be established ($10/month x 12 months/year x 5 years). Applying a 10% apportionment as noted by the Guidance would yield a royalty rate of $60 dollars. Thus, with a valuation model based on commercial activities having the strongest nexus between benefits conferred to consumers through connectivity, it can be observed that the royalty rate offered by an industry lead one-stop licensing solution being offered to automobile manufacturers seems reasonable and makes commercial sense.

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