ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION
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COMMENTS OF ITIF

Before the

Competition and Markets Authority

United Kingdom

In the Matter of Draft Guidance on the Application of the Chapter I Prohibition in the Competition Act 1998 to Technology Transfer Agreements	)

June 11, 2026

CONTENTS

Introduction 2
Consultation Questions 3
Question 5.1 3
Question 5.2 3
Question 5.3 3
Question 5.4 4
Recommendations 4
Conclusion 4

INTRODUCTION

On September 30, 2025, the Competition and Markets Authority (CMA) issued its Final Recommendation to the Secretary of State for Business and Trade that the Assimilated Technology Transfer Block Exemption Regulation (Assimilated TTBER) be replaced with a new UK block exemption with respect to technology transfer agreements that may otherwise be prohibited under Chapter I of the Competition Act 1998 (TTBEO).[1] The Assimilated TTBER incorporated the European Union's (EU) Technology Transfer Block Exemption Regulation into UK law, which supported safe harbours from competition law for licensing agreements that satisfy certain specified conditions.[2] On April 30, 2026, the CMA issued its Draft guidance on the application of the Chapter I prohibition in the Competition Act to Technology Transfer Agreements (Draft Guidance), which outlined the UK's own approach to exempting technology transfer agreements.[3]

The Information Technology and Innovation Foundation's (ITIF) Schumpeter Project on Competition Policy appreciates the opportunity to comment on the Draft Guidance and responds directly to the specific questions asked by the CMA. ITIF believes that in many important respects the Draft Guidance appears to broadly track the EU's own revised technology transfer guidance (Revised EU Guidance) on technology pools in a largely unproblematic way but rightly declines to follow the Revised EU Guidance's discussion of the competitive analysis involving licensing negotiation groups (LNGs).[4]

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[1] CMA, Final recommendation that the Secretary of State replace the Assimilated Technology Transfer Block Exemption (Mar. 14, 2025), https://www.gov.uk/cma-cases/proposed-recommendation-that-the-secretary-of-state-replace-the-assimilated-technology-transfer-block-exemption.

[2] Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements, 2014 O.J. (L 93) 17, https://www.legislation.gov.uk/eur/2014/316.

[3] CMA, Draft guidance on the application of the Chapter 1 prohibition in the Competition Act to Technology Transfer Agreements (Apr. 30, 2026), https://assets.publishing.service.gov.uk/media/69f23ee00bb62e692c5d6e70/Consultation_draft.pdf [hereinafter Draft Guidance].

[4] European Commission, Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements, https://ec.europa.eu/commission/presscorner/detail/en/ip_26_809.

CONSULTATION QUESTIONS

5.1 Are the content, format and presentation of the Draft Guidance sufficiently clear? If there are particular parts of the Draft Guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.

ITIF does not have any general comments about the structure and form of the Draft Guidance.

5.2 Do you have any comments on the CMA's proposed approach to technology pools?

ITIF believes that the 2014 Guidance put forward by the European Commission on the assessment of technology pools under its competition laws has been generally effective in providing legal certainty for undertakings, particularly with respect to the soft safe harbour that puts qualifying technology pools outside the scope of Article 101(1) scrutiny.[5] Indeed, the safe harbour put forward in the Draft Guidance is substantially similar to that in the Revised EU Guidance, and details seven conditions that must be met for the safe harbour to apply.[6] ITIF does not raise concerns with these conditions, which include new transparency, essentiality, and dipping requirements, but the CMA could also consider whether implementers, in some circumstances, may also be able to take steps to reduce double dipping. Moreover, ITIF supports the Draft Guidance's clarification that technologies licensed out by the pool must be licensed on fair, reasonable, and non-discriminatory (FRAND) terms to the extent that the pool includes standards-encumbered technologies—e.g., standard essential patents (SEPs)—to alleviate the risk of possible hold-up.

5.3 Do you have any comments on the CMA's proposal not to provide specific guidance on LNGs?

The EU Revised Guidance includes a detailed discussion of the possible harms and benefits associated with LNGs—albeit not any soft safe harbour, contrary to what had previously been proposed.[7] As ITIF explained, despite "the administrability benefits that such a safe harbour might bring, it is concerned that increased error costs in the form of false negatives will outweigh any of those gains," as well as that an "LNG safe harbour may encourage TTBER enforcement that serves protectionist purposes at the expense of competition and innovation."[8] Moreover, given their relative novelty, the Revised EU Guidance's remaining treatment of LNGs is premature, and the CMA is correct not to follow the EU and provide specific guidance in this area. Indeed, not only is most of the Revised EU Guidance's LNG analysis comprised of both tautological applications of EU law and a listing of theoretical harms and benefits that are valid for a range of similar buyer arrangements, but the particularized thresholds that are put forward, such as for market shares, appear to have little to no LNG-specific empirical basis.

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[5] Joseph V. Coniglio, Comments to EU Regarding the Draft Revised Technology Transfer Block Exemption Regulation and Technology Transfer Guidelines, ITIF (Oct. 24, 2025), https://itif.org/publications/2025/10/24/comments-eu-draft-tevised-technology-transfer-block-exemption-regulation-technology-transfer-guidelines/ [hereinafter Comments].

[6] Draft Guidance at 11.116.

[7] *See* European Commission, Revision of the Technology Transfer Block Exemption Regulation and Technology Transfer Guidelines – Overview of Main Proposed Changes ¶ 22 (Sept. 11, 2025), https://competition-policy.ec.europa.eu/public-consultations/2025-technology-transfer_en.

[8] Comments at 5.

5.4 Do you have any other comments on the Draft Guidance?

ITIF offers no other comments on the Draft Guidance at this time.

RECOMMENDATIONS

For these reasons, ITIF respectfully offers the following recommendations for the CMA to consider:

- **The soft safe harbour for technology pools will facilitate innovation**: Technology pools are a common and overwhelmingly procompetitive form of licensing behavior for which the Draft Guidance correctly provides a soft safe harbour that will result in administrability benefits that far outweigh any *de minimis* error costs from false negatives.
- **Specific guidance for LNGs is premature at this time**: Rather than adopt the theoretical and often tautological posture of the Revised EU Guidance, the CMA is prudent to suspend judgment about LNGs at this time until there is more empirical evidence about their overall harms and benefits that can ground sound and informative guidance.

CONCLUSION

As the CMA's Draft Guidance makes clear, "[t]echnology transfer agreements enable the dissemination of technology and incentivise initial research and development, thereby promoting innovation," and, in turn, "[t]he dissemination of technology and innovation are key drivers of a competitive, resilient and sustainable UK economy."[9] For this reason, the TTBEO and Draft Guidance not only play an essential role in alleviating, with respect to broadly beneficial practices like technology pools, the strain on businesses associated with "the unnecessary burden of scrutinising a large number of essentially benign agreements," but also "help[] to ensure that the CMA is able to concentrate resources on other matters giving rise to significant competition concerns."[10] In a time of increasing complexity in the application of competition law and regulation in the technology space, ITIF hopes that these twin goals of fostering innovation and lightening the increasingly extensive administrative burdens on businesses orient all aspects of the CMA's enforcement, especially under the Digital Markets, Competition and Consumers Act of 2024.[11]

Very truly yours,

[redacted]

[9] Draft Guidance at 1.5.

[10] *Id.* at 1.7.

[11] *See, e.g.*, Joseph V. Coniglio, Comments to CMA Regarding Its Strategic Market Status Investigation Into Microsoft's Business Software Ecosystem (June 4, 2026), https://itif.org/publications/2026/06/04/comments-cma-strategic-market-status-investigation-microsofts-business-software-ecosystem/ (arguing with respect to the contemplated SMS designation of Microsoft's business software that "[b]urdening leading technology companies with regulations will not only drive investment away from the UK, but also fail to represent a proportionate exercise of the CMA's authority, especially if the CMA out-regulates the EU by designating Microsoft's Copilot and Office suite to address practices that can readily be addressed using the UK's regular *ex post* competition laws").