Technology Transfer Guidelines Feedback

First, thank you for the opportunity to see these draft guidelines. In general I find them a helpful accompaniment to the technology transfer block exemption. These remarks will, then, be relatively short.

As preliminaries, I am an academic acting in a personal capacity.

You pose few questions for feedback, on which I will focus.

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 "Are the content, format, and presentation of the Draft Guidance sufficiently clear? If there are particular parts of the Draft Guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them."

    a. Use of examples:

    The clarity is good currently: all of the important points are stated clearly as far as I could see. I found two (related) areas, however, where I thought that more examples (or more developed examples) could help fix concepts.

    First, where complex interactions are involved, I would have benefitted from seeing how priorities were set in judging perhaps contradictory signals. This would require a moderately developed example. In other words, the document is both a statement of principle and a statement of practice, but sometimes how this plays out is not quite clear in an actual case. A related, second, issue is cases where a mechanical application of an aspect of the TTBEO raises a question of overarching principles that are to be safeguarded.

    There are already lots of examples in the text, which are helpful. It is more the format of these than the number that I would query. The current format includes very brief examples of a few words or a line or two in the text, equally brief examples in the footnotes or case references, and then some boxed examples late in the document around licensing between non-competitors. I found that the short examples were somewhat too short when considering "balancing where complex issues are involved", but I wasn't convinced that you needed to develop examples to the point of the longer ones late in the text.

    For the more complex balancing, then, one approach is a modestly sized boxed example. Another possibility would be to include some larger examples at the end of the entire document that focus on balancing several issues at once. Such a section would need to follow the totality of the guidelines in a separate "examples" section. This might allow people to see "guidelines in action" in the round.

    The two sections that particularly struck me on this point are:"*Anticompetitive effects of technology transfer agreements on competition"* , and "*Market definition".* These might not be the best chosen, however, to illustrate the point that underlies this comment.

    b. Minor comments:

    Resilience and sustainability are referenced early (1.5) and then do not appear further from what I could see. I was unsure how to read this reference in the context of guidelines that address how to apply the TTBEO. While I understand that these issues are important as a general rule and to public policy, if they are not referenced further then this rough statement is slightly confusing and perhaps muddies the waters with little benefit.

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

    Overall, the approach appears well-aligned with the EU approach, which should be useful (if nothing else, because the pools may span the two areas). I fully support transparency as an

important component of ensuring that technology pools realise their full positive potential for all parties, although it is also appropriate that transparency is only mentioned briefly here as a concept (as in the EU approach) because transparency means something different for each agreement. The footnotes contain the more precise minimum disclosure. Some relation between this minimum and information not included in the minimum that could be requested to make a disclosure "effective, reasonable, and proportionate" could be fleshed out and explained since the minimum might not be appropriate in all cases to implement the "overarching principle" of the request for transparency and what the request for transparency is there for. An example could perhaps address to some degree the contrast between the two notions of disclosure.

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

   I agree that it would be premature to include LNG's in this draft. This is partly because of the lack of case law, as indicated in the text, but importantly it is also that the theory is not fully settled in this area. As you point out in the notes, this is a developing area and, from the models that are being generated currently, the outcome for whether such groups help or hurt welfare depends on the specific considerations and their interaction. A general approach that takes into account the various effects so that groups can be encouraged where they help and discouraged where they don't – assuming that a clear message emerges on this – is simply not available yet. A case-by-case analysis would be more appropriate at this point.

   A statement of principle is all that one can fall back on in such a case to guide the case-by-case review. At the moment, the treatment of LNG's is so brief (vanishing) that the underlying reasoning does not come through, and this reasoning could be useful for nascent groups that are considering forming. While no active groups exist now, this can easily change.

   This abbreviated (or vanishing) treatment sets the guidelines apart from the EU version, but if the background is not yet available to be more precise then it is appropriate to diverge even if this is not desirable generally. At the same time, because LNG's are discussed in some depth and with some precision in the EU version and really not discussed at all in the UK version of the same type of regulation, it could be useful to make a general statement of principle, noting that licensing negotiation groups will be assessed on a case-by-case basis under the overarching principles of the TTBEO and as cases arise with some of the justification that is given in the consultation document to flesh out the justification could be useful to give a sense of the shape of the case-by-case treatment should it arise.

4. "Do you have any other comments on the Draft Guidance?"

   No.