

9 February 2026

Competition Policy Directorate  
Department for Business and Trade  
Old Admiralty Building  
Admiralty Place  
London  
SW1A 2DY

**RE: ACT | The App Association Consultation Response to Draft Technology Transfer Agreements Block Exemption Order 2026**

ACT | The App Association welcomes the opportunity to submit comments on the United Kingdom's consultation on the draft Competition Act 1998 (Technology Transfer Agreements Block Exemption) Order 2026 ('TTBEO').

ACT is a policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. Today, the ecosystem the ACT represents—which we call the app economy—is valued at more than £4.5 trillion globally and is responsible for more than 400,000 jobs in the United Kingdom (UK).<sup>1</sup>

Many of our members invent, develop, and sell internet of things (IoT) devices. The IoT ecosystem is expected to generate trillions of pounds for the global economy by 2030, significantly contributing to economic growth and job creation within the UK. The IoT sector relies heavily on the seamless licensing and implementation of standard-essential patents (SEPs). Unfortunately, the IoT market is 'very fragmented, competitive and cost sensitive'.<sup>2</sup> The IoT sector's ability to realistically obtain licenses to SEPs on fair, reasonable, and non-discriminatory (FRAND) terms is therefore paramount to ensuring a competitive and dynamic marketplace in the UK.

## **I. The Draft Order's Limited Scope & the Critical Need for CMA Action on SEPs**

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<sup>1</sup> *App Economy Fast Facts*, ACT | THE APP ASS'N (2023), [https://actonline.org/wp-content/uploads/About-the-App-Economy-2023\\_162023.pdf](https://actonline.org/wp-content/uploads/About-the-App-Economy-2023_162023.pdf); *The App Economy in the European Union*, DELOITTE (June 2020), <https://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-the-EU-2020.pdf>.

<sup>2</sup> Priya Nair, *The European Union's Proposal for a Transparent, Fair, and Reliable Standard-Essential Patent Landscape*, ACT | THE APP ASS'N (Oct. 5, 2023), <https://actonline.org/2023/10/05/the-european-unions-proposal-for-a-transparent-fair-and-reliable-standard-essential-patent-landscape/>.

ACT notes that the draft TTBE0 wisely maintains continuity with the existing regime. However, this high-level block exemption framework cannot, and does not, address the distinct and complex competition challenges prevalent in the SEP licensing ecosystem. Issues such as patent pool governance, essentiality transparency, FRAND adjudication, and the threat of coordinated hold-up require targeted guidance. These measures are vital to ensure that the FRAND commitment remains a meaningful guarantee, not just an abstract concept.

Therefore, the Competition and Markets Authority's (CMA) forthcoming Order is an essential and powerful vehicle through which the UK can establish a world-leading, pro-innovation, and pro-competition approach to SEP licensing. We strongly urge the CMA to use its Order (and related Guidelines) to decisively address the SEP-specific challenges outlined below. This is a unique opportunity for the UK to provide much-needed global leadership and legal certainty, ensuring its regime is fit for the modern, standards-driven economy and protects its vibrant SME community.

## **II. Support for Pro-Competitive Safeguards in SEP Licencing and Patent Pools**

We advocate for the CMA to include robust, pro-transparency principles in the TTBE0, particularly regarding patent pools. These measures are vital to ensure the FRAND commitment remains a meaningful guarantee, not just an abstract concept. The TTBE0 should establish clear conditions under which technology pools can benefit from a presumption of legality, linking this safe harbour to demonstrable transparency and pro-competitive practices.

Specifically, the CMA should clarify that pools benefit from this safe harbour only if they:

- Identify which specific patents are covered by the pool's license;
- Disclose their methodology and results for essentiality verification; and
- Ensure they do not charge licensees royalties for patents already under license or of unproven essentiality.

These transparency measures provide the much-needed foreseeability that all innovators, but particularly small and medium-sized enterprises (SMEs), require to make sound investment decisions early in the product development cycle. For a startup developing an IoT device, the inability to forecast predictable and transparent SEP licensing costs can be a prohibitive barrier to market entry. By empowering potential licensees to assess portfolio quality, the CMA can foster a more efficient and equitable licensing environment.

### **III. The Order Must Ensure Pools Assume and Adhere to Underlying FRAND Obligations**

The TTBE0 must ensure that patent pools are not used as vehicles for SEP holders to circumvent specific licensing obligations made to standard-development organisations (SDOs). While pools are subject to competition law, the Order must explicitly state that a pool's eligibility for a safe harbour is contingent upon it assuming and adhering to the specific FRAND commitments made by its constituent members to the relevant SDOs. This critical clarification prevents pools from becoming a mechanism to dilute or evade those commitments through collective licensing structures, thereby preserving the integrity of the standardisation process.

### **IV. The Order Should Prohibit Anti-Competitive Use-Based Pricing by Patent Pools**

We urge the CMA to provide clear guidance that royalty rate discrimination based solely on the end-use or downstream market of a product—where the same patented technology performs the same function—risks being anti-competitive and is fundamentally inconsistent with the core FRAND principle.

As recognised in the CMA's own guidance on horizontal agreements, a cornerstone of FRAND is that royalty rates must 'bear a reasonable relationship to the economic value of the IPR' being licensed.<sup>3</sup> Charging disparate royalties based on the success of the end product, rather than the value of the patented technology itself, can amount to a discriminatory 'success penalty' that unfairly taxes a licensee's own downstream innovation.<sup>4</sup> This distorts competition, punishes commercial success, and places an undue burden on innovative UK SMEs. It is important that the Order is aligned with the CMA's horizontal guidelines and reflect this principle.

### **V. Pools Should Not Engage in Litigation Coordination That Facilitates Anticompetitive Hold-up**

A critical and escalating concern in the SEP landscape is the coordination of litigation campaigns, which is often facilitated by patent pools. These actions often involve multiple licensors simultaneously seeking injunctive relief against a single defendant. Some pools go even further, not only coordinating the litigation but also promising to reimburse members that initiate litigation against pool-determined targets to compel a pool-wide license.

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<sup>3</sup> Competition & Mkts. Auth., Guidance on Horizontal Agreements ¶ 9.27 (Aug. 16, 2023), available at [https://assets.publishing.service.gov.uk/media/64dba33bc8dee400127f1d25/Horizontal\\_Guidance\\_FINAL.pdf](https://assets.publishing.service.gov.uk/media/64dba33bc8dee400127f1d25/Horizontal_Guidance_FINAL.pdf).

<sup>4</sup> David Katz, *Unfair Price Bias in Standard Essential Patents Needs to Stop*, BLOOMBERG L. (Nov. 22, 2023), <https://news.bloomberglaw.com/us-law-week/unfair-price-bias-in-standard-essential-patents-needs-to-stop>.

Such coordinated litigation represents a powerful tool for anti-competitive hold-up, dramatically increasing the pressure on implementers—especially resource-constrained SMEs—to accept supra-FRAND terms. The threat of a coordinated, multi-front injunction campaign can force a licensee to capitulate regardless of the merits of the patents-in-suit. The Order should therefore treat the coordination of patent enforcement strategy and litigation funding among pool members as a category of sensitive information exchange and collaborative activity that warrants the strictest scrutiny under the Chapter I prohibition. This activity fundamentally distorts the negotiating process and undermines the FRAND framework.

## **VI. Conclusion**

ACT welcomes the UK's move to establish its own tailored technology transfer framework. While the draft provides a necessary general structure, the CMA's Order presents a decisive and timely opportunity to tackle the acute competition challenges in the SEP market, a sector of immense importance to UK innovation.

By incorporating robust, pro-transparency, and pro-innovation principles focused squarely on SEPs and patent pools, the CMA can ensure the UK remains a competitive, fair, and attractive market for IoT developers and all standards-based innovators. We urge you to seize this opportunity.

We thank you for considering our views and remain available to the CMA to provide further detail on the issues facing our members, including participating in any subsequent consultation on the draft Order.

Sincerely,



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**ACT | The App Association**