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Feedback of

ACT | The App Association
(Transparency Reg. # 72029513877-54)
Rue Belliard 40,
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to the

European Commission

regarding the

Revised TTBE Regulation and Guidelines

Position Paper on the Draft Revised Technology Transfer Block Exemption Regulation and Technology Transfer Guidelines

ACT | The App Association (hereafter ‘the App Association’) welcomes the opportunity to submit comments on the European Commission’s consultation on the draft revised Technology Transfer Block Exemption Regulation (TTBER) and the draft revised Technology Transfer Guidelines.

The App Association 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 App Association represents—which we call the app economy—is valued at approximately €95.7 billion and is responsible for more than 1.4 million jobs in the European Union (EU).¹

Many of our members invent, develop, and sell Internet of Things (IoT) devices. The IoT ecosystem is expected to generate trillions of euros for the global economy by 2030, significantly contributing to economic growth and job creation within the EU. 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.’² 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.

I. Support For General Updates and Pro-Competitive Safeguards

The App Association commends the Commission for including several pro-competitive and pro-transparency provisions in the draft guidelines. These measures are vital to ensure that the FRAND commitment remains a meaningful guarantee, not just an abstract concept. We strongly support the Commission’s proposed changes that limit the availability of the TTBER Guidelines’ safe harbour provision to technology pools that:

- Identify which specific patents are covered by the pool’s license;³
- Disclose their methodology and results for essentiality verification;⁴ and
- Ensure they do not charge licensees royalties for patents already under license.⁵

¹ *The App Economy in Europe*, DELOITTE (Aug. 2022), 220912_ACT-App-EU-Report.pdf.

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

³ Commission Communication Approval of the Content of a Draft for a Commission Regulation on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Technology Transfer Agreements, C/2025/5024 (Sept. 16, 2025), at ¶ 285(b) [hereinafter Draft TTBER Regulation and Guidelines]

⁴ *Id.* at ¶ 285(c).

⁵ *Id.* at ¶ 285(f).

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 linking the availability of the TTBER Guidelines' safe harbour to these requirements, the Commission empowers potential licensees to assess the quality and strength of the patent portfolio. It allows for an informed evaluation of whether the royalty being demanded is, in fact, commensurate with a portfolio of proven-essential patents, or if it is inflated by patents of dubious essentiality or value.

II. The TTBER Guidelines Should Clarify the Safe Harbour Requires Technology Pools to Assume Any Obligations Attached to the Licensed IPR

While the safe harbour conditions outlined in Paragraph 285 provide important guidance for ensuring technology pools remain pro-competitive, the Guidelines must also ensure that patent pools are not used as vehicles for SEP holders to circumvent specific licensing obligations made to Standard-Development Organisations. The importance of this is recognised in Paragraph 292, which correctly states that pools are 'subject to any existing commitment to license on FRAND terms.'

Subpart F does not include the assumption of existing licensing commitments as a predicate for pools to benefit from the safe harbour. This permits pools to provide a vehicle for SEP holders to evade those commitments by licensing through pools that do not comply with the specific licensing obligations made by the SEP holder. In light of this ambiguity, the Commission should amend Paragraph 285(f) to specify that the requirement for FRAND licensing means includes the assumption of any specific licensing obligations attached to the patents licensed by the technology pool.

III. The Commission Should Prohibit Use-Based Pricing by Patent Pools

We urge the Commission to revise the proposed language in Paragraph 293 that condones rate discrimination based on end-use.

The EC's Horizontal Guidelines recognise that a fundamental principle of FRAND is that royalty rates must 'bear a reasonable relationship to the economic value of the [intellectual property rights]' being licensed.⁶ It is important that the TTBER Guidelines are aligned with the Horizontal Guidelines and reflect this principle.

However, use-based rate differentiation does not align with this principle. If two products use the same standard-enabling component, any difference in value is attributable to differentiating features or other downstream innovations, not the economic value of the patent. Condoning

⁶ Eur. Comm'n, Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements (Jul. 21, 2023), at ¶ 451.

different royalties based on end use can thus amount to ‘discriminatory licensing [that] is a “success penalty” that is inconsistent with FRAND.’⁷

IV. Pools Should Not Engage in Litigation Coordination That Facilitates Anticompetitive Holdup

Patent pools frequently coordinate litigation campaigns among their members to target potential licensees. 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.

A central concern is that pools may coordinate—and in some cases fund—litigation campaigns for a member to obtain an injunction that can be used to compel the putative licensee to take a pool-wide license, while avoiding licensees’ attempts to obtain an independent FRAND adjudication of pool terms. Given that pools do not benefit from (nor reimburse) litigations resulting in bilateral licenses, there is no reason for them to support their members seeking a bilateral license.

Such coordinated litigation significantly boosts the likelihood of extracting above-FRAND royalties, amplifying SEP market power. Because an injunction can represent an existential threat to a company, the mere possibility of one being secured can force a licensee to agree to pool terms—regardless of whether that SEP holder would ultimately prevail in court. Therefore, the guidelines should be revised to treat the coordination of patent enforcement among pool members as a category of sensitive information that undermines competition

V. Conclusion

The App Association thanks the Commission for this opportunity to comment on the updated TTBER and Guidelines and commits that it will remain available to the Commission if there are any follow-up questions or issues.

Sincerely,



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⁷ 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>.