

The new European Rules on Technology transfer agreements

Paolo Arcidiacono

This work takes under consideration the newest rules adopted by the European Union in the field of competition law. By means of the EU Regulation n. 316/2014, the European Commission has recently amended the Technology Transfer Block Exemption Regulation and, at the same time, updated the accompanying Guidelines on the application of the Art. 101.1 and Art. 101.3 of the Treaty on the Functioning of the European Union to technology transfer agreements.

Technology transfer agreements between two companies, such as licenses or assignments of patents, are an essential part of technology cooperation strategies and can originate important advantages for both undertakings and consumers. However, such agreements can restrict the competition on the market and be considered as infringing Art. 101.1 TFEU. In this respect, the Commission adopted a specific regulation for this particular set of contracts, thus providing a “safe harbour” for all those agreements that comply with the provision included therein. In detail, in the first chapter I will focus especially on the amendments to Art. 4 of the TTBER, which includes the so called “hard core restrictions” and whose inclusion in the agreement is sanctioned with the invalidity, as well as the changes made in Art. 5.

In the second chapter, I will address the subject of the patent pools. This term is generally used to define those special agreements, which are usually signed by multiple parties, aimed at putting together several Intellectual Property Rights in order to license them all at once. This allow firms to solve the problem of the so-called “patent thicket”, which describes the situation of multiple overlapping patents covering a technology or a product. Patent Pools are not covered by the TTBER and they are only considered only in the Guidelines which set forth basic principle in order to assess the validity of such agreements under the antitrust lights.

Finally, in the last paragraph I will provide some personal comments on these new rules and their impact on the European competition legislation.