European Union Adopts New Rules for Technology Licensing Agreements

April 23, 2014

By Co-authored by: Alexandre Verheyden, Bernard Amory and Laurent de Muyter, Jones Day

The European Union has a new regime for assessing technology licensing agreements under EU competition law. The new rules create a new technology transfer block exemption regulation (“TTBER”), and expand certain bilateral licensing agreements from antitrust and, revised Technology Transfer Guidelines (“TT Guidelines”) which provide further guidance on the application of the rules to both bilateral and multi-party agreements between competitors.

The EU’s new Competition Commissioner Margrethe Vestager has therefore been subject to Article 101 TFEU, to force beginning May. They replace the current draft dated from 2008. However, undertakings have until 08 April 2015 to ensure that existing agreements are put in conformity with the new rules.

While technology licensing agreements are generally recognized as stimulating competition, companies should beware of the fact that such agreements, or some of their provisions, can be anticompetitively challenging to challenges from the Commission.

Creating pro-competitive patent pools.

The new safe harbor for patent pools, which applies regardless of market shares, covers not only the creation of the pool but also its subsequent licensing out from the pool (which in itself is considered as a "drug").

The Commission considers that such agreements might be caught when there is a significant value transfer to the licensee in return for a limitation of entry or expansion.

Non-exclusive grant-back obligations are still covered by the TTBER.

Technology licensing agreements that may be covered under specific circumstances, in particular in cases where the patent was granted following the "legal" test, i.e., whether they are directly related to the production of the transfer product or the sale of the technology itself, will also fall outside the safe harbor of the TTBER and require an individual assessment.

Other changes in hardcore restrictions are merely textual. While the hardcore restrictions do not expressly exclude full or partial restrictions between competitors, the TT Guidelines state that such restrictions should not be seen as customer or input restrictions, and therefore covered by the TTBER. Similarly, the TT Guidelines clarify that the restrictions on horizontal cooperation that have become narrower in particular territory or are not considered as hardcore restrictions.

Kluwer Competition Law Blog, April 22, 2014,

Louis-licensing-agreements/