

Licensing Negotiation Groups under the Commission's Draft Technology Transfer Guidelines: Implications for Standard Essential Patent Licensing

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I. Introduction

Advanced technologies such as the Internet of Things (IoT) and artificial intelligence (AI) are increasingly embedded across almost every sector of the economy. Examples include safety, health, transportation, security, agriculture, energy, infrastructure and manufacturing. These technologies rely heavily on connectivity standards such as 5G, which incorporate patented technologies. As a result, the licensing of standard essential patents (SEPs) becomes relevant in sectors beyond traditional telecommunications.² Fostering an effective and predictable licensing environment ensures both investments in developing cutting-edge standardised technologies and enables their broad adoption. This, in turn, benefits consumers, industry and society at large.

In September 2025, the European Commission published draft versions of the Technology Transfer Block Exemption Regulation (TTBER)³ and the accompanying Technology Transfer Guidelines (draft Guidelines)⁴. In this context, the draft Guidelines introduced guidance on a novel type of collective licensing arrangement, referred to as 'licensing negotiation groups' (LNGs). In short, LNGs are arrangements whereby a group of technology implementers collectively negotiate licensing terms with patent owners. LNGs were presented as a means of reducing transaction costs and information asymmetries, potentially leading to licensing efficiencies. To date, however, they remain largely theoretical, as there is no noteworthy practical experience with such arrangements operating in real life.⁵

The draft Guidelines established a 'soft safe harbour' for LNGs without any robust and reliable market experience on LNGs. While such safe harbour is subject to certain conditions, the Commission explicitly recognised the severe potential anticompetitive risks attached to such arrangements.⁶

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² See European Commission, *Setting out the EU Approach to Standard Essential Patents*, COM(2017) 712 final, 1.

³ These instruments govern the assessment of technology transfer agreements under EU competition law, in particular Article 101 TFEU; see Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47. The TTBER grants a block exemption for certain technology transfer agreements under Article 101 TFEU, on the presumption that agreements meeting its conditions satisfy Article 101(3). The Guidelines clarify the interpretation of the TTBER and explain how agreements falling outside the block exemption are assessed under EU competition law.

⁴ European Commission, *Communication on draft TTBER and Technology Transfer Guidelines*, OJ C 5024, 16 September 2025,

⁵ In July 2025, the Commission issued guidance on an automotive LNG (ALNG), noting that LNGs represent a new type of arrangement and that, to its knowledge, no LNGs currently operate in the EU; see European Commission, Case AT.40979, *Guidance – Automotive LNG*, C(2025), 4526 final, paras 27–28. See also Commission, Press Release IP/25/1768 (9 July 2025).

⁶ European Commission, *Draft Technology Transfer Guidelines*, para 326.

This paper provides a competition law assessment of LNGs grounded in the practical realities of SEP licensing. It identifies aspects suggesting that the proposed guidance on LNGs is not aligned with the existing framework of Article 101 Treaty on the Functioning of the European Union (TFEU). The paper argues that the draft Guidelines do not adequately reflect the economic and structural realities of SEP licensing and risk harming the very competitiveness they seek to promote.

II. SEP licensing

An SEP protects inventions that are necessary to comply with a technical standard, such as 4G and 5G. These standards make modern connectivity possible by ensuring interoperability across devices and networks.⁷

Technical specifications for cellular standards are developed by companies and other stakeholders in 3GPP, a joint effort of seven standard development organisations (SDOs). The number of participants runs into the hundreds. However, only a limited number invest heavily in research and development (R&D) and contribute their proprietary technical solutions to the standardisation process.⁸ From those contributions, the best solutions based on their technical merits are chosen by consensus to become part of the standard.⁹

To ensure that standards remain widely accessible, SDO members typically commit to be prepared to grant irrevocable licences under their SEPs on fair, reasonable and non-discriminatory (FRAND) terms. FRAND licensing seeks to balance broad access to the standard while ensuring that innovators are fairly and adequately compensated.¹⁰

A FRAND-compliant licence does not transfer ownership of SEPs, as would occur in the purchasing of a good. It grants permission to use a patented technology for a limited period, typically in exchange for royalties. In contrast to the purchase of goods, implementers also often use the technology before taking a licence. Because standards are publicly available, products can be developed and placed on the market first, with licensing negotiations taking place later. This creates incentives for implementers to delay taking a licence in order to

⁷ See European Commission, *Setting out the EU Approach to Standard Essential Patents*, COM(2017) 712 final, 1.

⁸ 10 companies submitted 70% of the technical contributions in 3GPP between 2001 and 2020; See Georgios Effraimidis and Kirti Gupta, '5G standards and the stark divide between innovators and implementers', IAM Magazine (08 June 2022), available at: https://www.4ipcouncil.com/application/files/2016/5769/1919/5G_standards_and_the_stark_divide_between_innovators_and_implementers_-_IAM_2.pdf.

⁹ See European Commission, *Setting out the EU Approach to Standard Essential Patents*, COM(2017) 712 final, 1; 'Consensus' is understood as the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties and to reconcile conflicting arguments (ISO Guide 2:1991). Other key principles of standardisation include transparency, openness, impartiality, effectiveness and relevance, coherence and development dimension; see World Trade Organization, *Principles for the Development of International Standards, Guides and Recommendations*, available at: https://www.wto.org/english/tratop_e/tbt_e/principles_standards_tbt_e.htm.

¹⁰ Case C-170/13, *Huawei Technologies Co Ltd v. ZTE Corp*, EU:C:2015:477.

pressure SEP owners to accept royalties below what would otherwise be reasonable. This strategy is commonly referred to as ‘hold-out’.¹¹

Recent economic and judicial evidence points to ‘hold-out’ as a central challenge of SEP licensing.¹² Indeed, timely compensation is key for SEP owners. They make significant upfront R&D investments in standards development and rely on licensing income to continue their investment in the next generation of the standard.

When the technology is used (and monetised) without licence, the SEP owner can only stop the unlicensed use via a court order. Obtaining such a court order for SEPs is subject to certain conditions. In the EU these conditions were established in *Huawei v ZTE*.¹³

III. Assessment of LNGs under Article 101(1) TFEU

EU competition law introduces some limitations to companies’ conduct. For instance, Article 101(1) TFEU prohibits agreements or coordinated behaviour between undertakings that restrict competition. Because LNGs may involve coordination between competitors, they shall be assessed under this provision.

The draft Guidelines recognise that LNGs may affect competition at two levels. First, on technology licensing markets, where patent owners license their technologies. Second, on downstream product markets, where LNG members compete with each other by selling products that incorporate those technologies.¹⁴

The Commission explicitly acknowledges that in SEP licensing, LNGs may enable coordinated hold-out, collective pressure on royalties and the exchange of commercially sensitive information.¹⁵ Each of these forms of conduct can amount to a restriction of competition.

The draft Guidelines suggest that certain conditions may reduce anticompetitive risks. For example, where the LNG makes clear to patent owners that it negotiates on behalf of its members and adopts written internal rules governing its cooperation. At the same time, however, the draft Guidelines state that LNGs are not required to disclose the identity of all their members to the patent owners with whom they negotiate.¹⁶ In SEP licensing, this lack of transparency is a serious concern. FRAND-compliant terms are based on the value of the patented, standardised technology in the specific implementation context. If patent owners do not know which companies joined the LNG, it is hardly feasible to reliably assess this value. In such circumstances, collective negotiations do not seem to offer any practical benefits. On the contrary, collective action by implementers creates significant risk of collusion undermining FRAND licensing.¹⁷

¹¹ Marie Barani, ‘Patent hold-up and patent hold-out: evolutions in Europe and the US’ (03 December 2018), available at: <https://www.4ipcouncil.com/research/patent-hold-and-patent-hold-out-evolutions-europe-and-us>.

¹² Mathew Heim, ‘The focus in Europe moves from patent hold-up to hold-out’ (24 January 2020), IAM Media, available at: <https://www.iam-media.com/article/hold-out-in-europe-recent-evidence-and-its-impact>.

¹³ Case C-170/13, *Huawei Technologies Co Ltd v. ZTE Corp*, EU:C:2015:477.

¹⁴ European Commission, *Draft Technology Transfer Guidelines*, para 302.

¹⁵ *Ibid*, para 301 and n 130.

¹⁶ *Ibid*, para 307.

¹⁷ *Ibid*, para 301(a).

To establish an infringement of Article 101(1) TFEU, it must be assessed whether an agreement between undertakings has an anticompetitive *object* or actual or potential restrictive *effects* on competition. In addition, it must be capable of affecting trade between Member States. Both aspects are examined below.

A. Restriction by object

The draft Guidelines acknowledge that LNGs can lead to competition restrictions by object. A ‘restriction by object’ refers to an agreement or practice that is considered harmful to competition by its very nature. Because such conduct is inherently anticompetitive, there is no need to examine its actual effects on the market.¹⁸

LNGs may be used to support downstream seller cartels, such as agreements between competitors to fix prices, limit output or allocate markets.¹⁹ Moreover, an LNG that excludes actual or potential competitors may amount to a horizontal boycott, which is inherently restrictive.²⁰ Further, LNGs may also facilitate the exchange of sensitive commercial information between competing implementers. Where such exchanges go beyond what is strictly necessary, they can also constitute restrictions by object.²¹

Taken together, the draft Guidelines describe several ways in which LNGs may infringe Article 101(1) TFEU by object. Given that LNGs have not yet been tested in practice, it remains uncertain whether the proposed safeguards (outlined below) would effectively prevent these risks from materialising. This residual risk is particularly significant in the SEP context, where incentives to ‘hold-out’ are already embedded in the negotiation dynamics.

B. Restriction by effect

If an LNG is not anticompetitive by its very nature, it must be assessed based on its actual or potential effects on competition.²² This requires defining the relevant market(s). However, the draft Guidelines’ approach to market definition seems to disregard the fundamental market dynamics in the SEP licensing context.

For market definition purposes, the draft Guidelines focus on the alternatives available to patent owners. In simple terms, the key question is whether patent owners could refuse royalty offers and instead licence their technology to other implementers.²³ Applying this method to SEP licensing requires caution. As mentioned, the same standard may be used differently in different sectors and, consequently, may have different value depending on its use. For example, a smartphone, a healthcare device and a smart meter may all use the same standard. However, they use it in different ways and draw different economic value.²⁴

¹⁸ Case T-240/17, *Campine*, ECLI:EU:T:2019:778, para 297; see also Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, para 37.

¹⁹ European Commission, *Draft Technology Transfer Guidelines*, para 308.

²⁰ *Ibid*, para 309.

²¹ *Ibid*, para 310.

²² *Ibid*, para 311.

²³ *Ibid*, para 315.

²⁴ See *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2020] UKSC 37 (26 August 2020).

Markets should, therefore, be defined by use case or customer group. The Commission's Market Definition Notice already offers this possibility. When different customer groups are charged different prices for the same product for reasons not linked to cost, they may form separate (narrow) markets.²⁵ Without such segmentation, the competition assessment of LNGs risks a misguided assessment of competitive constraints, overlooking the economic realities of SEP licensing.

On the licensee side, collective negotiation can create joint buyer power, increasing the risk of coordinated conduct among competing implementers. If LNG members represent a substantial share of demand in the upstream licensing market, they may push royalties down below reasonable levels. This, in turn, could weaken incentives to invest in new technologies and standardisation, ultimately harming innovation and consumer choice.²⁶

The draft Guidelines suggest that such risks are lower when patent owners have 'countervailing bargaining power'. They suggest that such power may arise, for example, where the technology is essential to a widely adopted standard or where there are only a few licensors with large portfolios. Another example is LNG negotiation with a patent pool.²⁷

The assumption of the existence of 'countervailing bargaining power' on SEP owners' side requires closer scrutiny. Even where a technology is essential to a widely adopted standard, SEP owners operate under significant structural constraints. In particular, FRAND commitments impose specific obligations on their licensing conduct and limit their freedom of action. In addition, SEP owners must rely on litigation to restrain implementers 'unwilling' to take a licence for the technology they are using. Such remedies are neither immediate nor automatic but are subject to strict conditions overseen by courts, as established in *Huawei v ZTE*.²⁸

Given these constraints, SEP ownership should not be equated with countervailing bargaining power. The draft Guidelines nonetheless appear to treat it as such. This does not reflect the practical realities of SEP licensing and risks underestimating the potential anticompetitive effects of coordinated implementer bargaining.

C. The proposed soft safe harbour

The draft Guidelines introduce a soft safe harbour for LNGs, subject to certain conditions. These include open participation, transparency requirements, limited scope, restrictions on information exchange, safeguards against coordinated conduct, no foreclosure of third parties and a 10 % royalty cap.²⁹ Several of these conditions are particularly problematic in the context of SEP licensing.

²⁵ European Commission, *Notice on the definition of the relevant market for the purposes of Union competition law* (2024) C/2024/1645, para 88.

²⁶ European Commission, *Draft Technology Transfer Guidelines*, para 319.

²⁷ *Ibid.*

²⁸ See Case C-170/13, *Huawei Technologies Co Ltd v ZTE Corp*, EU:C:2015:477; European Commission, *Setting out the EU Approach to Standard Essential Patents*, COM(2017) 712 final, 2–3.

²⁹ *Ibid.*, paras 326(a)–(g).

(i) Six-month standstill

According to the draft Guidelines, an LNG must not restrict the freedom of its members to negotiate and conclude bilateral agreements with patent owners. At the same time, the draft Guidelines state that bilateral negotiations may be restricted for a six-month period in order to incentivise joint negotiations through the LNG.³⁰ It remains unclear why such an exception would be reasonably necessary to achieve the claimed procompetitive benefits of negotiating through an LNG.

In the SEP context, the six-month standstill would facilitate collective delay strategies. SEP owners often already face periods of unlicensed use before a licence is concluded. A standstill would further extend this period by temporarily restricting bilateral negotiations (and likely also enforcement), while implementers continue using the protected technology. This may prolong the time during which no licensing income is received, putting pressure on patent owners and jeopardising R&D investments essential for standardisation.

This concern is aggravated by the fact that LNGs are not required to disclose the identity of all their members.³¹ Without knowing who is covered by the LNG, it seems hardly feasible to monitor who benefits from the six-month standstill.

(ii) 10% royalty cap

The draft Guidelines further provide that licensing fees negotiated through an LNG must not exceed 10% of the product's sales price.³² The economic foundation of this cap appears to be questionable. The Commission's Explanatory Note explains that the cap is intended to prevent a significant increase in the commonality of costs between implementers.³³

Although apparently intended to serve as a safeguard against downstream coordination, this condition could operate in practice as an indirect price cap on technology. The 10% cap could also generate substantial uncertainty as to its practical application. For instance, it is unclear which product price should serve as the reference point. This question is central in SEP licensing, where royalties are based on the value the patented technology brings to the end product.³⁴ On the other hand, using component prices as a basis for calculating royalties (and potentially the 10% cap) does not reflect the value of the patented technology. The 10% cap could therefore risk systematically undervaluing SEP portfolios and pushing royalties below reasonable levels.

The proposed 10% cap also creates legal uncertainty from another perspective. It is not specified whether it would apply to the royalties agreed in one single licence or to the aggregate royalties for all licences negotiated by an LNG.

³⁰ Ibid, para 326(e).

³¹ Ibid, para 307.

³² Ibid, para 326(g).

³³ European Commission, *Revision of the Technology Transfer Block Exemption Regulation and Technology Transfer Guidelines – Overview of Main Proposed Changes*, 5.

³⁴ *CSIRO v. Cisco Systems Inc*, 2014 WL 3805817 (ED Tex 2014).

(iii) Voluntariness

Finally, the draft Guidelines do not expressly state that participation in LNG negotiations is voluntary for patent owners. This is an important point that requires clarification, especially in the SEP context. If left unclear, a refusal to negotiate with an LNG could later be framed as unwillingness or bad faith on the patent owner's side under the *Huawei v ZTE* framework.³⁵ LNGs could thereby become procedural gatekeepers for enforcement.

IV. Assessment of LNGs under Article 101(3) TFEU

Even where an LNG restricts competition under Article 101(1) TFEU, it may still be allowed under Article 101(3) TFEU, if it satisfies all four conditions laid down in this provision. If any one of these conditions is not met, the exemption established by Article 101(3) TFEU does not apply.³⁶

Article 101(3) TFEU requires that a restrictive arrangement produces benefits that outweigh its harm to competition.³⁷ The draft Guidelines suggest that LNGs falling within the soft safe harbour are likely to meet these conditions.³⁸ However, a closer examination in the SEP licensing context casts serious doubt on that presumption.

A. Are there any efficiency gains?

The main efficiency claim made for LNGs is that they would reduce transaction costs by replacing multiple bilateral negotiations with a single collective negotiation.³⁹ However, the draft Guidelines do not state whether an agreement reached between an LNG and an SEP owner is binding on the LNG's members.

If not, LNG members may have insufficient incentives to accept the negotiated terms. Instead, the members may choose to use these terms as a starting point for subsequent bilateral negotiations with the SEP owner. As a result, collective negotiations would likely be regularly followed by bilateral negotiations between SEP owner and individual LNG members. This would add an additional layer to the licensing process rather than creating efficiencies. SEP owners may be required to negotiate first with the LNG and then again with individual implementers. Such duplication increases complexity, delays licensing outcomes and raises transaction costs instead of reducing them.

The draft Guidelines also suggest that collective negotiation may reduce information asymmetries.⁴⁰ Yet they simultaneously restrict the exchange of commercially sensitive information.⁴¹ On the one hand, if such information is not shared, it is unclear how potential information gaps would be meaningfully reduced. On the other hand, if commercially sensitive

³⁵ See Case C-170/13, *Huawei Technologies Co Ltd v ZTE Corp*, EU:C:2015:477, paras 60–63, 65–66, establishing mutual good faith obligations in SEP licensing negotiations.

³⁶ See European Commission, *Guidelines on the application of Article 81(3) of the Treaty* [2004] OJ C 101/97, para 42.

³⁷ *Ibid*, para 11.

³⁸ European Commission, *Draft Technology Transfer Guidelines*, para 329.

³⁹ *Ibid*, paras 300(a), 329.

⁴⁰ *Ibid*, paras 300(b), 329.

⁴¹ *Ibid*, paras 301(b), 310.

information would be shared, the LNG would likely constitute a buyers' cartel, restricting competition by object. The efficiency claim seems to be inconsistent.⁴²

Finally, the Commission refers to a potential "first-mover disadvantage", suggesting that implementers may hesitate to conclude licences before their competitors.⁴³ This assumption does not align with court decisions that indicate that early licensees may in fact obtain more favourable licensing terms.⁴⁴ These decisions undermine the claim that implementers face a systematic disadvantage by licensing early. In SEP licensing, delay is more often strategic hold-out, which LNGs may reinforce rather than address.

B. Do consumers benefit?

Article 101(3) TFEU further requires that consumers receive a "fair share" of the benefits. This means that consumers directly or likely affected by the cooperation must obtain benefits at least equal to the negative effects caused by the cooperation.⁴⁵ The draft Guidelines assume that lower licensing royalties may translate into lower prices or improved products.⁴⁶

In the SEP context, this assumption is doubtful. SEP royalties typically represent a small share of end-product costs.⁴⁷ Even if LNGs were to reduce royalties slightly, meaningful pass-on to consumers is unlikely, especially in concentrated downstream markets. At the same time, reduced licensing returns risk undermining long-term investment in R&D and open standardisation. Any short-term cost savings may be offset by reduced innovation, ultimately harming consumer welfare by removing the technological basis ensuring interoperability and connectivity.⁴⁸

C. Indispensability and no elimination of competition

The remaining conditions of Article 101(3) TFEU require that the restrictions are indispensable to the attainment of efficiencies. In addition, the agreement must not eliminate competition in respect of a substantial part of the products in question.⁴⁹

As discussed above, LNGs as described in the draft Guidelines do not appear to generate verifiable efficiencies, nor are any benefits likely to be passed on to consumers. In the absence

⁴² The draft Guidelines emphasise that where implementers negotiate individually with technology holders, they must determine their licensing strategy independently and must not remove strategic uncertainty by fixing licence terms among themselves. In particular, they must not agree in advance on licence fees, scope, duration or other key parameters; see European Commission, *Draft Technology Transfer Guidelines*, para 305.

⁴³ European Commission, *Draft Technology Transfer Guidelines*, paras 300(c), 329.

⁴⁴ *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2020] UKSC 37 (26 August 2020), para 125; for example, Avanci offers discounted 'early licensee pricing' for its automotive licensing programs, see Avanci, '5G Vehicle' (early licensee pricing), available at: <https://www.avanci.com/vehicle/5gvehicle/>.

⁴⁵ See European Commission, *Guidelines on the application of Article 81(3) of the Treaty* [2004] OJ C 101/97, paras 85–86.

⁴⁶ European Commission, *Draft Technology Transfer Guidelines*, para 331.

⁴⁷ Evidence in the context of automotive LNG indicates that SEP royalties represent less than 1% of total vehicle manufacturing costs; see European Commission, Case AT.40979, *Guidance – Automotive LNG*, C(2025) 4526 final, para 27, available at: https://ec.europa.eu/competition/antitrust/cases1/202536/AT_40979_104.pdf.

⁴⁸ See European Commission, *Setting out the EU Approach to Standard Essential Patents*, COM(2017) 712 final, 2–3.

⁴⁹ European Commission, *Guidelines on the application of Article 81(3) of the Treaty* [2004] OJ C 101/97, paras 73–74, 105.

of these conditions, the exemption under Article 101(3) TFEU cannot apply.⁵⁰ A detailed assessment of indispensability and elimination of competition is therefore not necessary in the present case. In any event, the draft Guidelines contain several restrictive features, as discussed above. These raise serious doubts as to whether the restrictions could be considered indispensable.⁵¹

As regards the elimination of competition, a proper assessment depends on an appropriate definition of the relevant market(s).⁵² As noted above, the draft Guidelines' approach to market definition does not adequately reflect the differentiated use and value of standardised technologies across sectors in SEP licensing. This risks undermining the proper assessment of the competitive constraints faced by the parties.⁵³

Accordingly, LNGs as framed in the draft Guidelines are unlikely to satisfy the conditions of Article 101(3) TFEU and should not benefit from exemption.

V. Global Dimension

Standardised technologies are implemented and commercialised worldwide. Thus, SEP portfolios are typically global and licensed on a worldwide basis. Licensing practices must therefore consider antitrust rules in multiple jurisdictions. EU policy choices on LNGs should therefore not be assessed in isolation.⁵⁴

Concerns regarding the Commission's approach to LNGs have already been raised outside Europe. As an example, the U.S. Department of Justice Antitrust Division recently criticised these joint licensing initiatives.⁵⁵ They described LNGs as "a kind of a buyer's cartel dynamic" and warned that it is "concerning when agencies try to use antitrust analysis as a way to try to achieve trade goals".⁵⁶ Under U.S. antitrust law, collective negotiation of input prices by competitors would generally be treated as per se unlawful.⁵⁷ Shortly after those statements, the U.S. DOJ antitrust division issued investigative demands.⁵⁸ The aim is to examine whether the

⁵⁰ Ibid, para 42.

⁵¹ Ibid, paras 73–74.

⁵² European Commission, *Notice on the definition of the relevant market for the purposes of Union competition law* (2024) C/2024/1645.

⁵³ European Commission, *Guidelines on the application of Article 81(3) of the Treaty* [2004] OJ C 101/97, para 108.

⁵⁴ The Commission notes the important role European standardisation plays in the global context, see European Commission, *Setting out the EU Approach to Standard Essential Patents*, COM(2017) 712 final, 2.

⁵⁵ Dina Kallay, Deputy Assistant Attorney General, U.S. Department of Justice Antitrust Division, remarks at the 23rd International Conference on Competition, Berlin, 11–13 March 2026, reported in Khushita Vasant and Lewis Crofts, 'US DOJ's Kallay calls out 'trade interventions' by some antitrust agencies', MLex (12 March 2026).

⁵⁶ Ibid.

⁵⁷ Florian Mueller, 'U.S. deputy antitrust chief: EU Commission's comfort letter to Licensing Negotiation Group "concerning and unusual", irreconcilable with competition law principles' (10 October 2015), available at: <https://ipfray.com/u-s-deputy-antitrust-chief-eu-commissions-comfort-letter-to-licensing-negotiation-group-concerning-and-unusual-irreconcilable-with-competition-law-principles/>.

⁵⁸ Angela Morris, 'DOJ antitrust in investigation targets automakers in licensing negotiation group' (23 March 2026), available at: <https://www.iam-media.com/index.php/article/doj-antitrust-investigation-targets-automakers-in-licensing-negotiation-group>.

joint negotiation of licensing terms amounts to a form of buyer cartel conduct prohibited under the Sherman Act.

A divergence in the competition law treatment of LNGs will likely create significant practical risks. Multinational companies may face conflicting legal obligations, where conduct ‘tolerated’ in the EU could expose them to serious antitrust risk elsewhere.

These tensions also undermine the efficiency claims made for LNGs. A licensing model that cannot operate in major global markets is unlikely to deliver reliable or scalable efficiencies. Rather than simplifying licensing, LNGs risk adding an additional negotiation layer that must later be duplicated or undone.

More broadly, this divergence raises concerns for EU competitiveness. Standardised technologies depend on predictability and global acceptance. Guidance that promotes licensing structures incompatible with key non-EU jurisdictions may weaken Europe’s role in global technology development rather than strengthen it.

VI. Conclusions

This paper has analysed the guidance on LNGs provided in the Commission’s draft Technology Transfer Guidelines against the real-life dynamics and practice of SEP licensing. The analysis under Article 101(1) TFEU shows that LNGs can create serious anticompetitive risks, undermining innovation, open standardisation and consumer welfare.

The proposed soft safe harbour does not remove these concerns. Instead, the conditions the Commission established may strengthen hold-out behaviour, making SEP licensing more difficult. Some examples are the six-month standstill in licensing negotiations and the 10% royalty cap. Another example is the lack of express confirmation of the voluntary nature of any patent owner engagement with LNGs.

The assessment of LNGs under Article 101(3) TFEU hardly changes this picture. The efficiency claims attributed to LNGs by the draft Guidelines are uncertain and not supported by evidence in the SEP licensing context. Consumer benefits also appear to be unlikely. By contrast, the risk of harm to competition should not be underestimated.

Any misguided competition ‘white-listing’ of LNGs raises significant concerns in the context of SEP licensing due to its global nature. A licensing model that is allowed in the EU but may create antitrust exposure elsewhere, as in the U.S., is unlikely to deliver any efficiencies from a global perspective. Instead, it may increase legal uncertainty, transaction costs and fragmentation of licensing strategies. Over time, regulatory divergence may weaken Europe’s position in global standardisation and technology development.

The Commission conducted a public consultation on the draft texts until October 2025. The revised TTBER and Guidelines are expected to enter into force by 1 May 2026, as the current regulation is due to expire in April 2026. Currently there are many unanswered questions concerning both the factual operation and the competition law assessment of LNGs. Therefore, including general guidance on LNGs in the final version of the Technology Transfer Guidelines seems premature for the time being. Moreover, any assessment of novel and largely untested

collective negotiation mechanisms should be based on solid and reliable market experience. This, in turn, would allow for a sufficiently clear and robust understanding of the potential anticompetitive risks.