

# Draft guidance on the application of the Chapter I prohibition in the Competition Act 1998 to technology transfer agreements

Consultation document

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# 1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft guidance (Draft Guidance) on the application of the Competition Act 1998 (Technology Transfer Agreements Block Exemption Order) 2006<sup>1</sup> (the TTBEO) and the Chapter I prohibition in the Competition Act 1998 (CA98) to technology transfer agreements.<sup>2</sup> The TTBEO comes into force on 1 May 2026 and reflects the CMA's 30 September 2025 Final Recommendation to the Secretary of State for Business and Trade that he replace the Assimilated Technology Transfer Block Exemption Regulation (the Assimilated TTBER)<sup>3</sup> with a UK block exemption order.<sup>4</sup>
- 1.2 When finalised, this guidance will replace the EU's 2014 Technology Transfer Guidelines in the UK.<sup>5</sup>
- 1.3 The Draft Guidance is aimed at helping businesses to make their own assessment of their technology transfer agreements under the CA98 and to reach a view as to whether these fall within the scope of the TTBEO and therefore benefit from exemption from the Chapter I prohibition in the CA98.
- 1.4 The Draft Guidance also includes:
  - (a) Guidance on when technology transfer agreements are likely to restrict competition;
  - (b) Guidance on when technology transfer agreements are likely to be treated as exempt under section 9(1) CA98, on the basis that they produce benefits which outweigh any restriction of competition.
- 1.5 The CMA is inviting comments on the Draft Guidance by 11 June 2026.

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<sup>1</sup> SI 2026/369.

<sup>2</sup> Technology transfer agreements are agreements for the licensing of certain technology rights. See paragraph 1.1 of the Draft Guidance.

<sup>3</sup> [Commission Regulation \(EU\) No 316/2014 of 21 March 2014 on the application of Article 101\(3\) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements \(Text with EEA relevance\)](#) The EU's 2014 Technology Transfer Guidelines from 1 May 2026 will be replaced by revised EU Technology Transfer Guidelines: please see paragraph 2.11 below.

<sup>4</sup> [Final recommendation that the Secretary of State replace the Assimilated Technology Transfer Block Exemption - GOV.UK](#)

<sup>5</sup> Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements, OJ C 89, 28.3.2014.

## 2. Background

- 2.1 The CA98 prohibits anticompetitive agreements between ‘undertakings’ (eg businesses). This prohibition is known as the Chapter I prohibition.<sup>6</sup> The Chapter I prohibition applies to agreements and concerted practices between undertakings and to decisions by associations of undertakings (eg trade associations) which have as their object or effect the prevention, restriction, or distortion of competition within the UK.
- 2.2 There are many situations where agreements that restrict competition can, on balance, be beneficial to consumers. For this reason, the CA98 provides that agreements can be exempted from the Chapter I prohibition if they meet certain conditions relating to the benefits they produce.
- 2.3 Section 9(1) CA98 sets out the conditions that must all be met for an agreement to benefit from individual exemption from the Chapter I prohibition. Broadly, the agreement must contribute to clear efficiencies. Second, it must provide a fair share of the resulting benefits to consumers. Third, the restrictions on competition that it provides for must be no more than the minimum that is necessary to enable consumers to gain these benefits. Fourth, it must not give the parties to the agreement the opportunity to eliminate competition from a substantial part of the relevant products.<sup>7</sup>
- 2.4 An agreement may be assessed for exemption on an individual basis, applying the conditions set out above. Alternatively, a ‘block exemption’ exempts whole categories of agreements on the basis that agreements within the category would be likely to be treated as exempt if they were assessed individually. If an agreement meets the conditions set out in a block exemption, it is automatically exempt from the Chapter I prohibition.

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<sup>6</sup> Section 2 of CA98.

<sup>7</sup> The cumulative conditions in section 9(1) CA98 that must be met in full are that the agreement:

(a) Contributes to:

(i) improving production or distribution, or  
(ii) promoting technical or economic progress,

while allowing consumers a fair share of the resulting benefit; and

(b) does not:

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

## **The Block Exemption relating to Technology Transfer Agreements**

- 2.5 Block exemptions are a feature of both EU and UK competition law.
- 2.6 Before the UK's withdrawal from the EU, the 2014 EU Technology Transfer Block Exemption Regulation (the EU TTBER)<sup>8</sup> applied in the UK and provided an automatic exemption for technology transfer agreements meeting its conditions. Agreements which were exempted from EU competition law under the EU TTBER were also exempted from the Chapter I prohibition of the CA98.
- 2.7 When the transition period for the withdrawal of the UK from the EU came to an end on 31 December 2020, such that EU laws generally ceased to apply in the UK, the 2014 EU TTBER was assimilated in UK law as the Assimilated TTBER.<sup>9</sup> This meant that agreements in the UK could still benefit from the block exemption (both pre-existing and new agreements), provided that they met the relevant conditions. That has been the position up until the expiry of the Assimilated TTBER on 30 April 2026.

### **Replacement of the Assimilated TTBER**

- 2.8 On 30 September 2025, the CMA recommended to the Secretary of State for Business and Trade that he replace the EU Assimilated TTBER with a UK block exemption order.<sup>10</sup>
- 2.9 The Secretary of State for Business and Trade accepted the CMA's recommendation (subject to minor clarificatory modifications) and made the TTBE0 on 25 March 2026.<sup>11</sup>
- 2.10 The TTBE0 will come into force on 1 May 2026.

### **Separate developments in the EU**

- 2.11 The EU Commission has separately adopted a revised version of the EU TTBER and published the revised EU TTBER and revised EU Technology

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<sup>8</sup> [Regulation - 316/2014 - EN - EUR-Lex](#).

<sup>9</sup> See footnote 3 above.

<sup>10</sup> On 14 March 2025, the CMA published a consultation document pursuant to section 8(1) of the CA98, seeking views on its proposed recommendation to the Secretary of State to replace the Assimilated TTBER on its expiry with a UK TTBE0. The CMA's consultation ran until 11 April 2025.

<sup>11</sup> SI 2026/369.

Transfer Guidelines on 16 April 2026.<sup>12</sup> These will enter into force 1 May 2026.

2.12 As explained further in the CMA’s Final Recommendation to the Secretary of State on the Assimilated TTBER, the CMA recognises that divergence from the EU technology transfer regime could, depending upon the circumstances, result in increased licensing costs in the UK which could risk disincentivising such technology licensing.<sup>13</sup> The Draft Guidance therefore to a considerable extent reflects the approach taken in the revised EU Technology Transfer Guidelines, subject to changes necessary to address the differences between the TTBE0 and the EU TTBER (for which, see below) and changes that the CMA considers appropriate for the UK context (again, see below).

## Summary of changes in the TTBE0

2.13 The table below summarises the main changes between the TTBE0 and Assimilated TTBER addressed in the Draft Guidance.

Part	Changes
Definitions: <i>Removal of reference to utility models</i>	The new Guidance removes references to utility models from the definition of technology rights. As UK law does not provide protection for utility models, the exemption under the TTBE0 will no longer apply to utility models, unlike under the Assimilated TTBER.
Definitions: <i>Copyright in databases and database rights</i>	The TTBE0 expands the definition of technology rights to include copyright in databases and database rights, reflecting the growing importance of data in the modern economy. While data itself is not included (as there is no standalone UK intellectual property right for data), licences of database rights and database copyright may now fall

<sup>12</sup> C/2026/232.

<sup>13</sup> See for example paragraph 2.153 of the CMA’s Final Recommendation to the Secretary of State on the Assimilated TTBER.

	within the scope of the block exemption where other conditions are met.
Definitions: <i>Adding a definition of 'active sales' and 'passive sales'</i>	The TTBE0 introduces explicit definitions of active sales and passive sales, which were not defined in the Assimilated TTBER. The definitions align with those used in the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 (VABEO) to promote consistency, legal certainty, and alignment in the application of hardcore restrictions to technology transfer agreements.
Block exemption test: <i>New test for block exemption (technology markets)</i>	The TTBE0 retains the market share thresholds for technology markets from the Assimilated TTBER but introduces an additional alternative test for block exemption based on the existence of three or more independently controlled competing technologies. Agreements may qualify for the block exemption if either test is satisfied in respect of technology markets.

## Approach to Technology Pools

2.14 The CMA considers that it is appropriate for the Draft Guidance to address the competition law assessment of technology pools. Technology pools may facilitate the dissemination of technology and reduce transaction costs where they enable the joint licensing of complementary technologies. At the same time, depending on their structure and operation, technology pools may give rise to competition concerns, for example where they reduce competition between substitute technologies or facilitate coordination between technology holders.

- 2.15 In developing the approach taken in this Draft Guidance, the CMA has had regard to the approach set out by the European Commission in its revised EU Technology Transfer Guidelines and has followed that approach as it considers appropriate.
- 2.16 The CMA has also noted mixed feedback from stakeholders on certain elements of the safe harbour described in the draft EU guidance, in particular in relation to transparency requirements concerning the disclosure of technology rights included in a pool, the disclosure of methodologies used to assess the essentiality of technology rights, and the requirement that royalties charged by a technology pool to its licensees should be fair, reasonable and non-discriminatory (FRAND).<sup>14</sup>
- 2.17 The CMA however considers that effective transparency can assist existing and potential licensees in assessing the scope and value of the technology made available through a technology pool. The CMA therefore considers that disclosure of the technology rights included in the pool to existing and potential licensees should be made in an effective, reasonable and proportionate manner, and should include at least the patent numbers or patent application numbers (where these are publicly available), as well as the countries of registration or application. Such disclosures should be updated at reasonable intervals upon request by existing or potential licensees.
- 2.18 Similarly, the CMA considers that the methodology used to conduct essentiality assessments should be disclosed in an effective, reasonable and proportionate manner to existing and potential licensees. Effective disclosure should include, at a minimum, an explanation of the scope of the essentiality checks (including any sampling techniques used), the content of the checks (for example, which elements are assessed), and the criteria used to select the assessor (for example, the assessor's area of expertise and independence). This disclosure should also be updated at reasonable intervals upon request by existing or potential licensees.

## **Approach to LNGs**

- 2.19 In the CMA's Final Recommendation to the Secretary of State on the Assimilated TTBER, we indicated that we would consider whether to provide guidance on the assessment of licensing negotiation groups (LNGs) under the CA98. LNGs are industry associations or groups representing implementers

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<sup>14</sup> See for example, the responses to the European Commission consultation on the Draft EU TTBER and Draft EU Technology Transfer Guidelines available here: [2025 technology transfer - Competition Policy - European Commission](#)

of standards that jointly negotiate licences with individual SEP holders and SEP technology pools.

- 2.20 Having considered the issue and taking into account the stakeholder feedback that the CMA has received, we do not consider it appropriate to include specific guidance on LNGs in the Draft Guidance. It appears to the CMA that LNGs have emerged relatively recently as an issue in technology transfer licensing and the CMA has no institutional experience in assessing LNG arrangements. In addition, to the best of the CMA's knowledge, there are no LNGs currently operating in the UK. In light of these considerations, the CMA considers that it is more appropriate at this time to assess LNGs arrangements on a case-by-case basis, taking into account the specific factual and economic circumstances of the arrangement in question.
- 2.21 The CMA may revisit the question of whether in due course more detailed guidance on LNGs would be appropriate, should there be increased market practice or enforcement activity with regards to LNGs and should the CMA gain institutional experience with such arrangements.

### **3. Scope of the consultation**

- 3.1 This consultation seeks the views of interested parties on the Draft Guidance which is published separately on the consultation page.
- 3.2 After this consultation, the CMA will prepare final guidance that takes into account feedback received.
- 3.3 The CMA plans for the final guidance to be accompanied by a practical and accessible 'Short Guide' that aims to provide a shorter overview to help businesspeople understand how the TTBE0 and the Chapter I prohibition apply to technology transfer arrangements.

## 4. Consultation process

### How to respond

- 4.1 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments on the Draft Guidance.
- 4.2 We encourage you to respond to the consultation in writing (by email) using the contact details provided in paragraph 4.5 below. Please provide supporting evidence or examples for your views where possible.
- 4.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 4.4 In accordance with our policy of openness and transparency, we will publish non-confidential versions of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide at the same time a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive.

### Duration

- 4.5 The consultation will run from 30 April to 11 June 2026. Responses should be submitted by email by 5pm on 11 June 2026 and should be sent to: [ttberreview@cma.gov.uk](mailto:ttberreview@cma.gov.uk).

### Compliance with government consultation principles

- 4.6 In preparing this consultation, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

### Statement about how we use information and personal data that is supplied in consultation responses

- 4.7 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and

10 the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.

- 4.8 We are processing this personal data for the purposes of our work. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.
- 4.9 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).
- 4.10 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any commercial information (information relating to any business of an undertaking whose disclosure the CMA considers might significantly harm the undertaking's legitimate business interests) or any private information (information relating to the private affairs of an individual whose disclosure the CMA thinks might significantly harm that individual's interests). If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 4.11 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, if you have made any representations about the confidentiality of any information contained in your response, we will take such representations into consideration. We will also be mindful of our responsibilities under the data protection legislation referred to above and under Part 9 of the Enterprise Act 2002.
- 4.12 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

## **Next steps**

- 4.13 After the consultation, the CMA will prepare the final version of the Draft Guidance.

4.14 The CMA will publish the final version of the Draft Guidance on its webpages at <http://www.gov.uk/cma>. The CMA will also publish the responses received during the consultation. These documents will be available on our webpages and respondents will be notified when they are available.

## **5. Consultation questions**

- 5.1 Are the content, format, and presentation of the Draft Guidance sufficiently clear? If there are particular parts of the Draft Guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- 5.2 Do you have any comments on the CMA's proposed approach to technology pools?
- 5.3 Do you have any comments on the CMA's proposal not to provide specific guidance on LNGs?
- 5.4 Do you have any other comments on the Draft Guidance?