

Technology Transfer Agreements in EU and US Antitrust Law

Research project

Investigator:

Anna Maria Baumgartner

Abstract:

Technological innovation and the transfer of the resulting intellectual property rights are indispensable to the economies of the European Union and the United States. Consequently, the antitrust treatment of IP licensing has gained increased significance. Currently, technology transfer is a fundamental incentive to innovation, enabling those who undertake major investments in research and development to achieve optimal financial gain from their goods and services. However, these transactions are likely to raise antitrust issues and may involve enforcement agencies and judicial bodies in Europe and the United States.

The first step of the research project will be to elaborate in detail the relevant antitrust law provisions, which includes a precise examination of the main legal sources – the *COMMISSION REGULATION (EC) No 772/2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements* (“*Technology Transfer Block Exemption Regulation*”) as enacted by the European Union and the *Antitrust Guidelines for the Licensing of Intellectual Property* published by the U.S. Department of Justice and the Federal Trade Commission. In addition, the investigator will analyze complementary material and corresponding case law. Subsequently, the investigator will conduct a legal comparison of both sets of rules including their scope, basic principles, and typical antitrust issues.

In the EU and the U.S., technology transfer agreements are considered to be pro-competitive as they usually improve economic efficiency and reduce duplication of research and development, strengthen the incentive for the initial research, and foster diffusion and product market competition. Despite this general compliance, a comparative study will point out the differences between the relevant antitrust law provisions. Considering the expiration of the EU Technology Transfer Block Exemption Regulation on April 30, 2014, the objective is not only to underline the aspects that need to be taken into account when drafting a technology transfer agreement, but also to present new ideas and provide suggestions for future improvements of the EU Technology Transfer Block Exemption Regulation.

The project is co-sponsored by the Stanford-Vienna Transatlantic Technology Law Forum (Stanford Law School/University of Vienna School of Law) and the Europe Center at the Freeman Spogli Institute for International Studies at Stanford University.