# Intellectual Property Rights and Technology Transfer – Need for right Approach



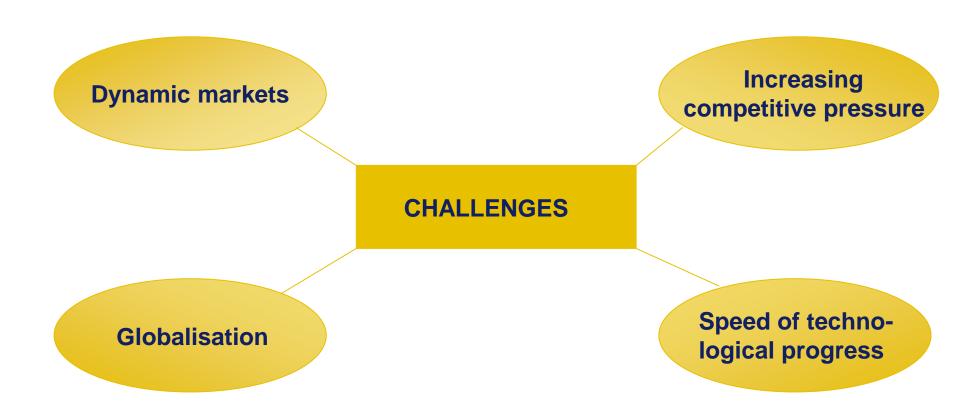
# **AGENDA**

(1) The technology based industry challenges and solutions

(2) Technology Transfer (revised) EU Competition Law Regime

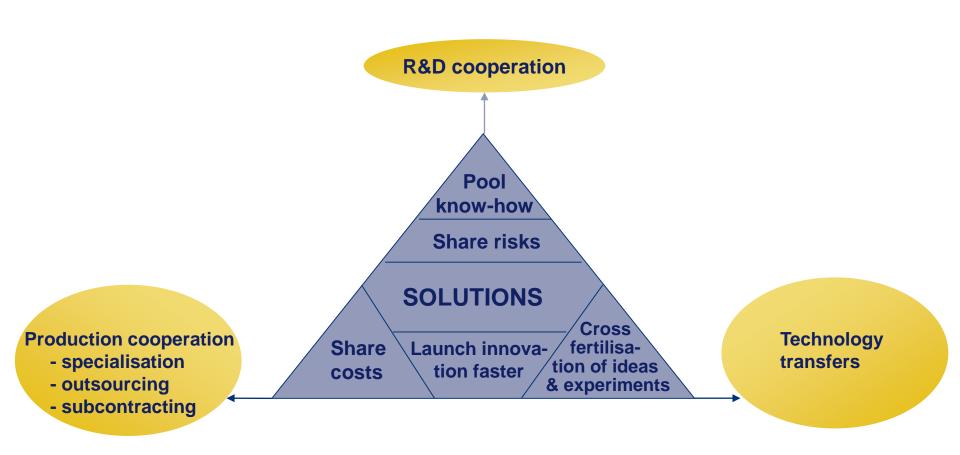


# (1) The technology based industry - challenges and solutions





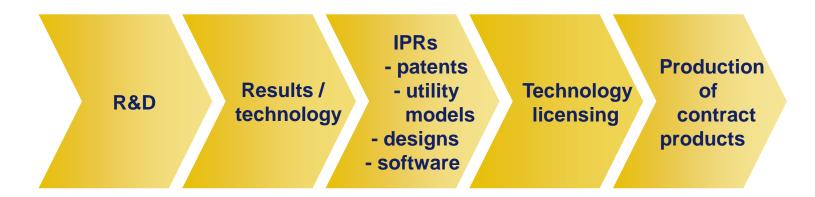
# (1) The technology based industry - challenges and solutions





#### A. Technology Transfer - General

Intellectual property licensing flow chart

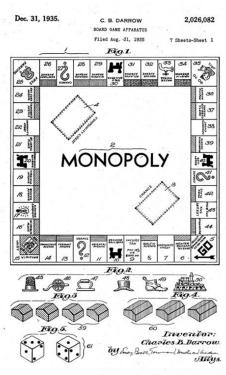




#### A. Technology Transfer - General

 Permission granted by the owner of the intellectual property right to another to use it

- On agreed terms and conditions:
  - ✓ Defined purpose
  - ✓ Defined territory
  - ✓ Agreed period of time
- Licensing out / Licensing in





#### A. Technology Transfer - General

- Opportunities: substantial economic benefits
  - Share risks
  - Save costs
  - Pool know-how
  - Launch innovation faster
- > Threats: anti-competitive effects
  - Price fixing
  - Output limitation
  - Sharing of markets
  - Sharing of customers
  - Innovation (quality, variety) limitation



#### B. Article 101 TFEU

Article 101(1) TFEU (prohibition)

Prohibits agreements that appreciably prevent, restrict or distort competition within the EEA

e.g. an agreement limiting

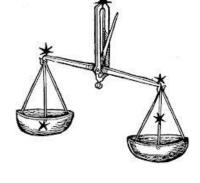
a contracting party's possibility to exploit its own technology and/or to effectuate independent R&D

- void not enforceable agreement (art. 101(2) TFEU)
- fines up to 10 % worldwide turnover

#### B. Article 101 TFEU

- Article 101(3) TFEU (exemption)
  - Exempted provided 4 cumulative conditions are met:
    - ✓ improving production/distribution or promoting technical or economic progress
    - √ 'fair share' for consumers
    - ✓ indispensable to attain the objectives
    - no possibility to eliminate competition in respect of a substantial part of the products in question

technical or economic benefits > limitations on competition



#### B. Article 101 TFEU

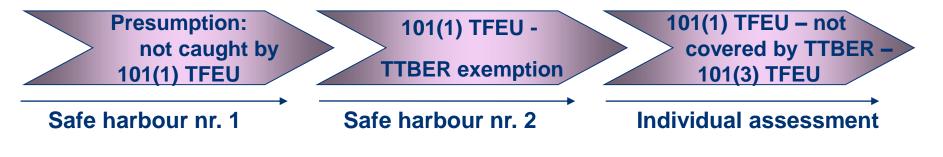
- > Art. 101(3) TFEU (exemption)
  - Presumption for agreements exempted by categories
  - Other: ad hoc assessment of art. 101(3) TFEU

#### Self assessment – Helping means:

- De minimis notice (2001) no competition distortion if market share does not exceed:
  10% (joint / competitors)
  15% (each / non-competitors)
- Guidelines on "the effect on inter-state trade" (2004)
- "Safe Harbours" (Reg. 774/2004 TTBER, expired on 30 April 2014 / Reg. 316/2014 entered into force on May 1<sup>st</sup> 2014)
- TTBER Guidelines (2014)



#### B. Article 101 TFEU - Assessment Summary



- Safe harbour nr. 1 :
- 4 or more technology substitutes *or*, below *de minimis or* no noticeable influence on interstate trade
- no hardcore restriction
- Safe harbour nr. 2 :
- under TTBER market share threshold, and
- no hardcore restriction
- Individual assessment :
- the market position of the parties, competitors and purchasers (market power)
- market access thresholds
- maturity of the market
- other factors (e.g. length of the agreement, regulatory frame, etc.)



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