Brussels, 4 February 2015

EFTA SURVEILLANCE AUTHORITY

Background note on the new Technology Transfer Block Exemption Regulation (TTBER)

Licensing helps to spread innovation and allows companies to offer new products and services. It also strengthens incentives for research and development by creating additional revenue streams to recoup costs. Licensing therefore plays an important part in economic growth and consumer welfare. However, it can also be used to harm competition, for example if two competitors in a licensing agreement divide markets between them instead of competing with each other. Another example would be a licensing agreement that excludes the use of competing technologies in the market. These and other anticompetitive agreements are prohibited by Article 53 of the EEA Agreement

The main features of the new rules include the following:

- The revised regime continues to reflect the fact that licensing is in most cases pro-competitive.

- New guidance on “patent pools”: patent pools can give companies cheaper and easier access to necessary intellectual property rights, such as standard essential patents, by establishing a one-stop-shop. Recognising the often pro-competitive nature of patent pools, the creation of and licensing from patent pools now benefits from a safe harbour in the Guidelines.

- A more prudent approach to clauses that could harm competition and innovation: certain types of clauses are no longer automatically exempted from antitrust rules but have to be assessed case-by-case. These are clauses which allow the licensor to terminate a non-exclusive agreement if the licensee challenges the validity of the intellectual property rights, and clauses that force a licensee to license any improvements it makes to the licensed technology to the licensor on an exclusive basis.

- The Guidelines also give guidance on settlement agreements.