

## Art. 101 TFEU restrictive agreements



1

### **restrictive agreements – exemption Regulation**

- EU Regulation 316/14
- Technology Transfer Block Exemption Regulation (TTBER) and Technology Transfer Guidelines
- TTBER covers licences and transfers of all 'technology rights'
  - patents, know-how, utility models, design rights, semiconductor, plant varieties, software
- *similar approach: Regulation 1217/2010 on research and development agreements*

2

## restrictive agreements – exemption Regulation

- general approach is that such agreements will usually improve economic efficiency and are pro-competitive
- as they can reduce duplication of research and development, facilitate diffusion and generate product market competition
- ... by creating additional revenue streams to recoup costs, licensing plays an important part in economic growth and consumer welfare
- yet, Commission is also aware that licensing and assignment agreements may be used for anti-competitive purposes
  - eg, where two competitors use licensing agreements to segment markets between themselves
  - eg, where they fix prices

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3

3

## exemption Regulation – market shares

- technology transfer agreements made in the following contexts are exempt from the restrictions/bans of Art. 101(1) TFEU
- agreements concluded between competing undertakings where the undertakings' combined market share does not exceed 20% of the relevant market
- agreements concluded between non-competing undertakings where the undertakings' combined market share does not exceed 30% of the relevant market

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4

4

### restrictive agreements – exemption Regulation

- exemptions are granted on condition that the agreements do not contain certain restrictions that are regarded ...
- ... as having significant anti-competitive effects
- Artt. 4 and 5 Regulation list a set of hardcore and excluded restrictions that are regarded as being severely anti-competitive restraints and are therefore not exempted

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5

5

### restrictive agreements – exemption Regulation

- **hardcore restrictions** - Art. 4 Examples:
- restriction of a party's ability to determine its prices when selling products to third parties
- limitation of output
- restriction of the licensee's ability to exploit its own technology rights or the restriction of the ability of any of the parties to the agreement to carry out research and development ...
- ... unless such latter restriction is indispensable to prevent the disclosure of the licensed know-how to third parties

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6

6

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7

7



- the routes to exploit / commercialise IP owned by universities are:
  - a) **licensing IP to an already established company**
  - b) **creating a “spin-out” company**
- choice between the 2 options depend on: **(i) kind of market**  
**(ii) level of interest of potential licensees/investors**

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8

8

**factors to be taken into account by IP  
Commercialisation Board  
– for approval of spin-out company**

- overall benefits to university
- IP to be incorporated in the company
- viability of the business plan presented
- risks, financial cost, tax position

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9

9

**factors to be taken into account by IP  
Commercialisation Board  
– for approval of spin-out company**

- that company has appropriate insurance cover for financial losses
- availability of an appropriate management team
- external partner organisations' efforts, reputation, financial position

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10

10

## equity distribution

- if university requires a shareholding in the company – it's a minority shareholder
- inventors who receive shares **will not be eligible to benefit personally** from revenue received by uni from spin-outs ...
- ... eg, from dividends, sales of shares or royalty payments
- **risk of conflict of interests is minimised**

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11

11

## directorships for inventors

- **inventors** may also be **directors**
- inventors/directors must recognise the potential for **conflict of interest**
- ... and **undertake to take advice** and **training**

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12

12

## revenue sharing

- **policy**: to share with IP creators a percentage of revenues
- eg, academic staff, students



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13

13

## revenue sharing

Total Net Income	Inventor	School	University
up to £ 5,000	100%	Nil	Nil
from over £5,000 to £50,000	70%	15%	15%
from over £50,000 to £100,000	50%	25%	25%
over £100,000	33%	33%	33%

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14

14

## commercialisation process – Phase 1

- a **disclosure** by IP creators by filling the Invention Disclosure Form
- preserving novelty of inventions
- Technology Transfer Team assesses invention
- ... including **potential for strong IP protection** and **commercial opportunities**



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15

15

## commercialisation process – Phase 2

- if the initial search leads to a recommendation to exploit
- a **confirmatory deed of assignment** from the inventor(s) to uni is executed



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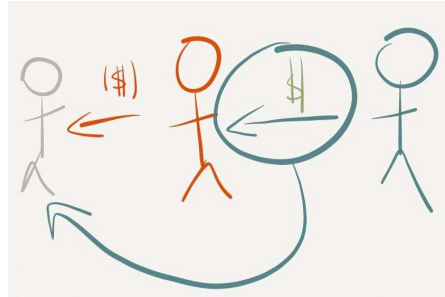
16

16



## commercialisation process – Phase 3

- if university decides that it does not wish to pursue commercialisation
- ... it may offer **to assign the ownership to IP creators**



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17

17

## commercialisation process – Phase 4

- if uni decides to commercialise,
- **arrangements** with **patent agents** or other professional advisers
- ... to **specify** and **protect** the identified **IP**



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18

18

## commercialisation process – Phase 5

- **assessment** of commercialisation opportunity / strategy by Technology Transfer Team
- strategy varies case to case
- eg, **licensing**, **assignment**, or the creation of a **spin-out company**



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19

19

## commercialisation process – Phase 6

- IP Commercialisation Board will **approve** the commercialisation strategy
- aim to have reached an agreement on the way forward within **6 months** from the date of notification of disclosure form



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20

20

- created in 2005 by **Oxford University**
- produces / sells **nanopore sequencing products**
- with the company's value recently reaching **£1.5 bn**



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21

21

- **University of Cambridge**
- ... which has launched a **platform that highlights genetic disorders and rare diseases**
- in 2015 it was awarded **£2 million** by Genomics England to continue its research




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22

22

- **Cambridge University**
- a biotech company famous for its **“anti-aging” chocolate bar**




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23

23

- created by **UCL** and **Imperial College** in 2015
- developed a **£10 device that monitors kidney disease**




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24

24

- created by **UCL** in 2001
- ... which develops **antibody-drug technology aimed at treating cancer**
- ... then bought by AstraZeneca in 2013 in a **\$ 440 million deal**



The Spirogen logo features the word "Spirogen" in a blue, sans-serif font. To the left of the text is a circular arrangement of red, pill-like shapes of varying sizes, some overlapping, creating a sense of a cluster or a ring.

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25

25

- **University of Manchester**
- ... has developed **technology producing 3D structures of drug molecules**
- ... facilitating rapid, safe and cost-effective development of drugs
- ... London Stock Exchange value of **£31 million**



The C4X Discovery logo consists of a dark blue square containing a white circle. Inside the circle is a stylized blue 'X' shape with a white outline, resembling a cross or a molecular structure. Below the circle, the text "C4X DISCOVERY" is written in white, bold, uppercase letters.

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26

26

- created in 2009 by Welsh Institute for Minimal Access Therapy at the **University of Cardiff**
- develops a **device capable of handling the smoke during keyhole surgery in the abdomen**
- distributed in 25 countries
- recently investing **£2.1 million** to increase commercialisation



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27

27

- created by **University of Edinburgh** in 2008
- ... producing **new generation of anti-cancer therapies**
- 2011 secured **£6.74 million** in venture capital financing


**NUCANA**  
BIOMED

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28

28

- ... created in 2012 by the College of Medical Veterinary and Life Science at **Glasgow University**
- developed **innovative technology to assess drug toxicity**
- got **£2 million** investment led by Epidarex Capital, a life science venture capital fund




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29

29

- **University of Dundee**
- ... uses **AI to discover more effective drugs**
- partnered with US biopharma company Celgene
- ... which contributed with a **£19 million** upfront investment



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30

30

## conclusion

- **success stories** confirm that commercialisation of academic innovation does produce tangible results
- ... which benefits investors / universities as revenues are reinvested to fund and support further university research
- whole process strengthens universities' ties with the private sector



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31

31

## conclusion

- while this undoubtedly changes the traditional public role of the UK university
- ... it benefits the local and national economy,
- ... wider society and the public at large



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32

32