Case Study

Defining fair and reasonable conditions in a project for the benefit of SME associations

May 2012

Funding details

Funding source: Seventh Framework Programme (FP7)
Programme: Capacities – Research for the benefit of SME associations
Type of company: Research Institute

1. The problem

Research for small and medium-sized enterprise (SME) associations is an action within the Research for the Benefit of SMEs funding scheme that targets associations acting on behalf of their SME members. The programme specifically concerns those associations supporting SMEs wanting to invest in the acquisition of new knowledge in order to improve their competitiveness. The SME associations are incentivized to invest in Research and Technological Development (RTD) projects and subcontract research to RTD providers (e.g. universities, research centres or other research-performing SMEs) in order to obtain the necessary technological know-how they lack.

Recently, a European research institute submitted a proposal as a coordinator for a project within the SME associations’ programme. Following the positive evaluation of the proposal, the coordinator was invited to begin negotiations with the Research Executive Agency (REA), a funding body created by the European
Commission to manage large parts of the Seventh Framework Programme (FP7). One of the main purposes of the negotiation was to agree on the technical details of the project that was outlined in Annex I - Description of Work (DoW) of the grant agreement.

In this context, and as the leader of the negotiations, the research institute requested the consortium partners to reach an agreement on the definition of “fair and reasonable conditions” under which access rights to background for use with foreground would be granted by the RTD performers to the SME associations. As foreground had not yet been developed, the RTD performers argued that the background needed to exploit it was undefinable. Thus, the fair and reasonable terms for such access rights, in their opinion, should be decided at a later stage. However, REA’s project officer found this possibility to be inconsistent with the Intellectual Property Right (IPR) rules within the specific action and therefore requested the conditions to be clearly defined in the DoW.

2. Action undertaken

As a coordinator of the project, the research institute would not be able to specify the conditions, including the financial terms, reckoned as “fair and reasonable” for the licence of the background. Indeed, only the consortium members that potentially would be required to grant such access rights could come forward and specify such terms, which could then be discussed with all the other partners.

Therefore the coordinator firmly and repeatedly requested the RTD performers concerned to specify the conditions under which access rights to background would be granted, if they needed to use foreground resulting from the project.

3. Outcome

Regardless of the many attempts of the coordinator, the RTD performers maintained their position. Therefore, all consortium partners agreed to mention in the draft proposal of the DoW that “background needed to use and exploit foreground, shall be provided to the SME AGs only, on a royalty free basis or on fair and reasonable conditions, to be agreed in writing among the Participants concerned”.

However, REA’s project officer refused such proposal in accordance with the legal framework applicable to these particular actions. In fact, according to article 50.6 of the Rules of Participation, access rights to background needed to use foreground can only be granted by the RTD performer under fair and reasonable conditions if those terms have been agreed to prior to the signing of the grant
agreement. Otherwise, these access rights must be granted on a royalty-free basis.

Given the lack of time and the inability of the RTD performers to come forward with a proposal on the terms to grant access rights, all consortium partners inevitably agreed to accept the default option: i.e. to grant the access rights on a royalty-free basis. The DoW was adapted accordingly, since in actions for the benefit of SMEs it is foreseen that the consortium must include in Annex I of the grant agreement (articles III.1 and 2) the settlement (so-called “transaction”) concerning access rights to be provided to any SME or SME associations.

The negotiation stage was therefore a success and the consortium signed the grant agreement, although the participants in this project had failed to define the “fair and reasonable conditions” to grant access rights.

4. Lessons learned

✓ Before starting to draft a proposal, applicants should take the time to read all the documents concerning the call of proposal and be familiar with the specific IP rules related to the programme in question.

✓ In actions for the benefit of specific groups, if access rights to background for use purposes are intended to be granted on fair and reasonable conditions, such terms must be clarified and discussed prior to acceding to the grant agreement.

✓ Participants should give high priority to the transaction.
GET IN TOUCH

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