

Response to the ERG Consultation on AS and Cost Accounting

1. We are delighted that the ERG is proposing to issue a draft Opinion on proposed changes to the Commission Recommendation. Accounting Separation is a key part of the regulatory tool box and one that is the necessary and vital underpinning for the successful operation of non-discrimination and cost-orientation remedies. We believe that precise and proportionate remedies on notified operators should serve the interests of the industry as a whole.

2. As non discrimination and cost-orientation requirements apply to access as well as interconnection products, those accounting separation regimes that do not cover access products need to be extended.

3. To date AS has not yet been very successfully implemented in many Member States. We have asked our Members to answer a number of questions on the AS regime currently in place in the EU and we will be making the results of that survey available to the ERG.

4. We think that the ERG paper is already a very good document. However we have some suggestions to make in particular areas that would in our view increase its usefulness from the perspective of an NRA using it as a road map. These suggestions come under three headings: general principles, how examples should be deployed in the Annex, and, identification of areas where there is currently an unjustifiable lack of harmonization.

(i) General principles

We think that the document could usefully set out that there are some general principles that regulators should keep in mind when they are constructing different aspects of the national rules for AS. These are sometimes explicit and often implicit in the current draft, but we think they could helpfully be made upfront. Three examples are: -

Objectivity: The attribution of joint and common costs shall be objective and not intended to benefit any product, service, or business of either the SMP operator or any other operator.

Consistency of Treatment: There shall be consistency of treatment from year to year. Where there are material changes that have a material effect on the information reported, the operator shall be required to disclose the impact of the change and or restate the parts of the previous year's statements affected by the changes.

Transparency: the document of the AS methodology adopted should provide a transparent description of the accounting and other methods used in the preparation of the Accounting Separation Statements such that a suitably informed reader can easily understand how they have been constructed.

The full list of principles is contained in the body of our submission.

(ii) Examples

The Annex to the Opinion contains a number of examples. We think examples will be most helpful where they go to the full level of detail, showing how the application of principle allows the regulator to make correct decisions about issues of allocation. This probably means fewer examples in the paper but more detail in the ones retained. The reason for doing this is that it is useful for NRAs that have not yet implemented to see the full range of issues on which they need to make decisions.

(iii) Unjustifiable lack of harmonization

Currently, there is a huge difference in the transparency required by regulators.

To give one example:

In a number of countries, there is, for example, lack of transparency as to the methodology for attributing joint and common costs. This is not a business secret capable of altering the pricing policies of competitors. Competition is not less fierce in Ireland or the UK where the methodology is published than in Germany where it is not. However, lack of publication, and the consequent reduction in scrutiny of what is a complex methodology means that incumbents can double charge competitors for the same set of costs. The current draft recommends that NRAs consult on the methodology, but it is not clear whether or not it recommends that the final agreed methodology be published. We believe that the latter is key.

To give another example:

Incumbents in some countries claim that detailed figures on the costs of individual products are a legitimate business secret. At a certain level of disaggregation this is fair enough. (As long as this reason is not used as an attempted justification for not passing the data to the NRA!). However, aggregated figures which show the average costs of interconnection products, for example call termination, and allow new entrants to verify these prices are cost-oriented are available in the UK and Ireland. How can this information, which clearly does not distort the market in the UK and Ireland, be considered to do so in other Member States? We note that the draft Opinion rightly calls publication of such figures. However, we think the ERG needs to make an evaluation of what really is a business secret and consequently provide guidance to NRAs and notified operators as to what should reasonably be published to third parties.

4. In practice, there is a great deal of variety in the extent to which AS systems have been implemented in each Member State. Companies with an existing obligation to comply could be found along a spectrum of compliance. We think the Commission or NRAs working together through the ERG should undertake a qualitative review of the extent to which existing AS systems actually function and what they would need to do in order to move towards compliance. We would like to emphasise the need for a qualitative review and not a simple box-ticking exercise. An external consultant such as Deloitte's would be ideally placed to do this and could complete the exercise rapidly. (Deloitte's now employ the consultants that undertook the 2002 study for the Commission).

5. Some incumbents will complain about the vast costs and huge resources that deploying an AS system would require. First, this ignores the fact that they should already have set them up. Second, it's not true. Consulting accountants estimate that putting in a compliant AS system would probably cost less than 5 million euros and take six months – where one had to be set up from scratch. (In the context of the turnover of an incumbent this could not be considered disproportionate). In practice, the companies have existing systems which could be adapted. Third, companies will have to start modifying their internal systems anyway to conform with new International Accounting Standards.

6. We commend the ERG Opinion. If we can be of further assistance on this topic, please contact Andy Tarrant, Regulatory Affairs Director of ECTA at atarrant@ectaportal.com