

**IFIEC RESPONDS TO THE ERGEG CONSULTATION PAPER ON “GUIDELINES FOR GOOD PRACTICE ON FUNCTIONAL AND INFORMATIONAL UNBUNDLING”**

**General remarks**

1. IFIEC considers the contribution of ERGEG’s draft of Guidelines for Good Practice (GGP) on functional and informational unbundling very positive, taking into account the current state of the legislation in EU.
2. However, IFIEC considers that real neutrality of the grid towards access by any party, which could best be realised in the form of ownership unbundling, is a necessary milestone for the creation of a true European power market. Only truly independent TSOs have the proper incentive to develop interconnections and improve the security of the system operation. Cooperation of fully independent TSOs would make possible:
  - 2.1. the creation of a Eurogrid coordinator to supervise the operation of the system on a European scale. This would increase the volumes of energy exchanges, reinforce cross border competition and ease the integration of massive renewable energy;
  - 2.2. the harmonization of operational practices and the engineering of power systems;
  - 2.3. the merging of adjacent TSOs to create a multinational TSO that will put its focus in a shared planning of infrastructures. This would also minimise current discussions on cost allocation (e.g. inter TSO mechanisms).
3. IFIEC believes that a non-unbundled situation requires a more complex and stricter regulation to make sure that a level playing field is in place. Regulators are required to ensure non-discriminatory access to the grid, being able to solve claims from affected parties and of imposing penalties in case of the TSO’s failure to fulfil their obligations. The proposed “Guidelines of Good Practice” will not put any binding rules in place on which regulators can act. Even if these guidelines are transformed into binding rules, it is still questionable if strict regulation will be enough to outweigh the huge commercial benefits these companies will be able to make through technical or legal loopholes.

**Specific responses to consultation questions**

***General: Do you think that these Guidelines are sufficient to guarantee a level playing field in view of vertically integrated companies?***

4. The proposed 33 GGP mentioned by ERGEG shows the complexity of setting up a proper regulation for ensuring an independent TSO. All aspects of operation and management within a TSO might be influenced. The long shadow of the big shareholder will inevitably influence TSO’s management decisions, when there is a risk for other activities of the group.
5. The economic size of a TSO is always small compared to other parts of the business (think of generation). The penalty for not fulfilling their obligations as a TSO may be smaller than

---

AUSTRIA OEKV	BELGIUM FEBELIEC	CZECH REPUBLIC SVSE	DENMARK FSE	FRANCE UNIDEN	FINLAND FFIF	GERMANY VIK	HUNGARY IEF
ITALY AICEP	NETHERLANDS VEMW	POLAND IEP	PORTUGAL A.P.I.G.C.E.E.	SPAIN AEGE	SWITZERLAND EKV	UNITED KINGDOM EIUG	

---

the resulting advantages to its shareholder. A legally binding penalty scheme is the minimum needed for not following the guidelines and dissuading a TSO from favouring shareholders.

6. It is difficult to imagine that a TSO affiliated to a vertical integrated group will have the financial independency to decide on their own on new investments, particularly in those leading to a further market integration. This may curb the construction of an internal market.
7. Additional labour and accounting arrangements, so not permitting corporate consolidation of a TSO affiliate, should be required. Stock options, pension or retirement schemes and other indirect compensation methods should be restricted to the management of a TSO affiliated to a vertically integrated group. Moving to other jobs within the holding for TSO management should be prohibited or highly restricted. The expectation of a better job could play as a negative incentive for independent behaviour.

***Are unbundling requirements already today included in Corporate Governance Guidelines or your Quality Management Systems? Do you think that these measures may harmonize implementation of unbundling in Europe?***

8. The first question should be answered directly by TSOs, but it seems there is nothing in place except for the countries that voluntarily decided to introduce independent TSOs. To the contrary, there is sufficient evidence that regulators have to fight against the attempts of grid operators to keep and save the power for the traditional rights and role of their generators / shareholders. (See the problem in Germany to provide for a proper third party access to the gas grid, although this is foreseen in the Energy Act as of 2005.)
9. As countries may implement different solutions, harmonisation is not guaranteed. Diversity in legislation limits the capability of coordination among TSO in trans-national questions that involves cost allocation problems. For instance, internal grid reinforcements to maximise interconnection use or how to deal with loop flows.

***G06: Does unbundling in your view necessitate a restriction of information flows to the mother company further than those necessary for a pure financial investor? Do you experience conflicts of governance regulations in your country with unbundling requirements? Would it be possible to install trustees who act on behalf of the mother company (investor) in supervisory boards and who are to protect financial interests of the investor without disclosing commercial information to the mother company?***

10. Financing projects in a not-unbundled situation is a very critical issue for a TSO belonging to a vertically integrated utility. Shareholders obviously need complete information to approve their investments. How could they otherwise decide without sufficient information? The problem starts if they feel that a particular investment has a “poor” return compared to other capital allocation or even reduces the return on other investments. This conflict of interest shows that a maximum of neutrality towards investments in grids can only be achieved through ownership unbundling.
11. Information must not be hidden. Information on infrastructure projects must be disclosed to every player affected. How can one exclude or limit the information specifically to the shareholder? It looks very artificial to use trustees. The information should be in the public domain and managed in the most transparent way.

***G08: Do you think that these rules can guarantee the independence of the management and employees? Or do you think that the possibility for management and employees to be assigned to the network company and then back to the competitive business after some time as part of the internal career should be prohibited?***

12. This also is a very critical issue. It would be paradoxical that a TSO employee could move more easily to a job with a third party rather than in the same group. The question is at the

heart of the issue and is the reason why IFIEC has always maintained the need for full unbundling. The honesty and invulnerability of TSO management must be assured, but not at the cost of their career opportunities. Such measures would mean restricted career opportunities for employees inside the holding and would discourage highly skilled people from working for the TSO. Such dramatic measures could make recruitment for a TSO very difficult, which is the opposite of the result needed. TSO's need high quality technical management working to effective network management rules which are overseen by effective regulators. The threat from breaking the legal rules has to be a greater concern than pressure from within the wider corporate structure.

END