



EUROPEAN COMMISSION
DIRECTORATE-GENERAL COMPETITION

Directorate A - Policy and Strategy
Unit A2 - Mergers case support and policy

CALL FOR TENDERS

COMP/2015/008

Collection of key qualitative and quantitative information on European
Commission's merger decisions

TENDER SPECIFICATIONS

1. PURPOSE AND CONTEXT OF THE STUDY

1.1. Purpose of the study

- (1) The Competition Directorate General ("DG Competition") of the European Commission intends to increase its capacity in the ex-post evaluation of merger decisions. In order to facilitate the review and analysis of the Commission's merger practice, DG Competition would like to extract and collect key qualitative and quantitative information about each case. This data would also allow DG Competition to have a better overview and knowledge of the main parameters of its merger decisions, allowing it to produce regular reports with statistical information on these main parameters which can feed into internal analyses of DG Competition's decision-making practice in EU merger control, both for operational and for policy purposes, and parts of which, in aggregate form, could also be published by the Commission and used for communication purposes.
- (2) The Contractor shall extract key information from all non-simplified past Commission merger decisions based on Articles 6(1)(b)¹, 6(2)², 8(1)³, 8(2)⁴ and 8(3)⁵ of Council Regulation (EC) No 139/2004, (the Merger Regulation) of the last 8-15 years according to criteria detailed in section 2 below. At the end of the contract, the Contractor will deliver these data to DG Competition in a predetermined format and structure.
- (3) Intended users of such data will be DG Competition officials who require this information either for operational, policy and/or communication purposes.

1.2. Context of the study

- (4) DG Competition has recently performed a preliminary in-house review of a number of past merger decisions (the "in-house review"). The in-house review focused on two aspects of merger decisions, (i) geographic market definition and (ii) remedies. It involved a data-collection exercise regarding past merger decisions from the Commission. The purpose of this review was two-fold:

1.2.1. On geographic market definition

- (5) The in-house review examined the different scopes of geographic market definitions (in particular, national versus EEA-wide or wider) used in past decisions with a view to identifying to what extent globalisation and EU integration have affected the Commission's geographic market definitions. This is one of the questions that remain of central importance to the present study.
- (6) The in-house review involved gathering: (i) basic information about the decision, e.g. date of decision, case number, decision, NACE sector, and (ii) the scope of geographic market definition of affected markets.

¹ Phase I unconditional clearance decision.

² Phase I clearance decision with remedies.

³ Phase II unconditional clearance decision.

⁴ Phase II clearance decision with remedies.

⁵ Phase II opposition decision.

- (7) The data collection exercise related the geographic market definition to the type of sector assessed in a merger decision. It also looked at the possible evolution of geographic market definition in the Commission's decisions over time and how this relates to the increased globalisation of the world economy.

1.2.2. *On remedies*

- (8) The in-house review was undertaken to address issues regarding the Commission's practice in remedies cases. It aimed at correlating the Commission's decisions in remedies cases to the type of merger, the theory of harm identified and/or degree of overlap, market shares and concentration levels.
- (9) The in-house review provided some preliminary results regarding the Commission's practice on geographic market definition and remedy implementation in merger cases. However, the short time-span and the scope of the sample did not allow for solid conclusions to be drawn.
- (10) DG Competition, therefore, considers that a more in-depth data collection exercise on the past practice of EU merger control would be required to obtain statistically solid results. DG Competition therefore decided to publish the present call for tender for a new study with a view to broadening the time horizon of the data collection while also deepening the scope of the data collected. This data should, therefore, include a wide range of characteristics of these decisions that go beyond aspects of geographic market definition and remedies as specified in the task description.
- (11) Given the expanded scope and different format of the data to be collected, the Contractor shall not rely on the data previously collected by the Commission, although the experience of the Commission in collecting the previous data will be shared with the Contractors, if deemed appropriate.

2. TASK DESCRIPTION

- (12) The Contractor shall extract, collect, classify and deliver the requested data (the "Data") in a pre-determined format and populate a database created by the Commission.⁶ Part of the Data, may be made publicly accessible in an aggregated and non-confidential manner.
- (13) The data collection and delivery will take place in two phases.
- (14) During the **first phase**, the Contractor will review the public versions of the Commission's decisions of the last 8-15 years and deliver the relevant data.
- (15) During the **second phase**, the Contractor will be granted access to the confidential versions of the Commission's decisions through a data room procedure on the premises of DG Competition and thereby process and deliver the remaining relevant data. No confidential information or other business secrets shall be removed from the data room, including confidential versions of Commission's decisions, and any notes, databases or data in physical and electronic form. Access to the data room is subject to compliance with data room rules and confidentiality undertakings, which will be drawn up in line with and

⁶ Importing the delivered data into the Commission database is out of the scope of this tender.

incorporating the main principles and rules set out in the data room rules annexed to the Best Practices on the disclosure of information in data rooms in proceedings under Antitrust rules, Articles 101 and 102 TFEU, and under the EU Merger Regulation as published in DG Competition's external merger website (<http://ec.europa.eu/competition/mergers/legislation/legislation.html>), subject to any modifications required to adapt those data room rules to the specific requirements of this assignment.

- (16) It is estimated that, for the period proposed, the Contractor will review approximately 100 decisions per year on average. Language skills required are English, French, German, Italian and Spanish. The collected data shall be delivered in English. The Contractor will be given access to the confidential version of the decisions.
- (17) The data shall contain comprehensive information about each non-simplified Commission merger decision based on Articles 6(1)(b), 6(2), 8(1), 8(2) and 8(3) of the Merger Regulation for the past 8-15 years.⁷ Non-confidential data that will be reviewed during the **first phase** of the exercise should ideally include but does not have to be limited to all of the following items:⁸
- (a) **Basic information about the decision.** Date of decision, date of notification, case number, type of decision (according to Articles 6(1)(b), 6(2), 8(1), 8(2) or 8(3) of the Merger Regulation), name and nationality of acquirer and target company, turnover of parties, thresholds fulfilled for notification, referrals (*Yes* or *No* and which type of referral).
 - (b) **Theory of harm.** Unilateral, coordinated, vertical, conglomerate effects, "gap" cases.
 - (c) **Type of merger.** Horizontal, vertical or conglomerate.
 - (d) **Product market definition.** Name of the product market definition (textual from the Decision); "standardised" product market definition⁹ (the Contractor will be requested to develop a table of "standardised product market definitions" that will enable to aggregate and report on this field).
 - (e) **Size of market(s) affected**, in terms of turnover.
 - (f) **Classification of geographic market definition of affected markets**, into these seven categories:
 - i. National,
 - ii. At least national,
 - iii. Cross-border/regional,

⁷ See the Section 9.4 on Award Criteria for more details.

⁸ The final data collection scope and hence the definitive structure for delivery of the data will be re-fined and agreed upon between DG Competition and the Contractor within 4 weeks after signing the contract.

⁹ This would group together product markets which are the same in substance where they have been given a different title.

- iv. EEA,
- v. At least EEA or
- vi. Worldwide.
- vii. Other

This information will have to be compiled for all markets assessed in each decision and the information should make clear whether the market was: "*defined*", "*considered likely to be*" or "*left open*".

For cases i, ii. and iii., please detail which Member States were affected by the transaction.

(g) Contrast, when available, final decision with parties' claims on:

- i. Scope of geographic market definition.
- ii. Number of main of competitors in market.
- iii. Presence and importance of imports.

(h) Whether the product/geographic market definition changed. The information of whether the product or geographic market definition of a product market has changed since the last time the Commission assessed this market must also be included

(i) Type of competition assessment. The contractor must identify in the form of binary information (Y/N) as many as possible of the parameters of competitive analysis employed in the merger assessment, including: (i) size and importance of market shares, market shares increase, (ii) size and importance of concentration levels and concentration levels increase, (iii) creation and/or strengthening of a dominant position (iv) closeness of competition, (v) switching costs, (vi) barriers to expansion and/or entry (vii) removal of an important competitive force, (viii) conditions for coordinated effects, (ix) buyer power, (x) elimination of potential competition, (xi) constraint from imports outside the relevant market, (xii) efficiencies, (xiii) failing firm defence, (xiv) input foreclosure, (xv) customer foreclosure.

(j) Type of remedies, if any: Remedies' classification should include the following categories: stand-alone divestiture, carve-outs, re-branding, divestment of IPRs, divestiture of Crown Jewels. For all divestiture remedies, it should be identified whether they are to be divested within a fixed time-limit after the decision, with an up-front buyer or as a "fix-it-first". Other classifications should also include: removal of links with competitors, access remedies, slot divestitures, elimination of exclusive supply links or other.

(k) Size of remedies: In case of divestiture remedies, the size of the remedy in the relevant market, in terms of output, revenue and capacity, where available.

- (l) **Reach of remedies:** In case of divestiture remedies, how much of the overlap was covered by the remedies (in terms of output and-or capacity increment).
 - (m) **Impact of the decision.** Price increase avoided and customer savings (including the time frame of the analysis when available).
 - (n) **Sector information.** The decision classified according to a meaningful sector. The NACE 4-digit classification should be identified but a more meaningful sector classification will have to be adopted, based on DG Competition's own Directorate organisation (i.e. organised according to sectors like Energy, Environment, ICT, Financial services, etc.). The exact scope of this classification is to be discussed during the first meeting with the Commission.
- (18) Confidential data that will be reviewed during the **second phase** of the exercise, through a data room procedure, include but do not have to be limited to:¹⁰
- (a) **Sales of each of the merging parties in the relevant market, in terms of output, revenue and capacity,** where available.
 - (b) **Market shares of each of the merging parties in the relevant market, in terms of output, revenue and capacity,** where available.
 - (c) **Concentration measures and increase, where available.** Herfindahl–Hirschman Index (HHI), CR4, increase in the HHI (Δ HHI), where available.
 - (d) **Market shares of each of the competitors,** where available (and where each competitor has more than 5% market share).
 - (e) **Other information that may turn out to be confidential:** Turnover of parties, price increase avoided and customer savings.
- (19) The confidential nature of the data will have to be identified in a specific field.

3. RELATIONSHIP WITH EXISTING DATABASES

- (20) Tenderers are encouraged to describe in their respective tenders existing databases of merger decisions set up by academics, think tanks or commercial data providers and explain which information from publicly available databases could be reused for the purposes of the data collection under this assignment. The European Commission will acquire ownership of the result (the data). If the collected and delivered data include data which are not publicly available, the cost covering full and timeless usage must be included in the tender and licenced to the Commission (see Article I.8 of the draft service contract, Annex II to the invitation to tender). The Commission will not accept engaging in regular or recurrent fee payments.

¹⁰

The final data collection scope and hence the definitive structure for delivery of the data will be re-fined and agreed upon between DG Competition and the Contractor within 4 weeks after signing the contract.

4. TECHNICAL REQUIREMENTS OF THE FINAL DELIVERABLE

- (21) The Contractor shall deliver the collected data in XML format in a structure agreed upon with DG Competition. The definitive XML structure for delivery of the data will be re-fined and agreed upon between DG Competition and the Contractor within 4 weeks from signing the contract.

5. TIMETABLE

- (22) The delivery of services required by the present contract starts upon the signature of the contract by the last contracting party. The total duration of the contract until delivery of the data cannot exceed 9 months from the signature of the contract by the last party.
- (23) In total, **three** meetings in DG Competition's premises in Brussels shall be held during the performance of the contract.
- (24) A kick-off meeting will be held after a maximum of 2 weeks from contract signature. The Contractor will meet with DG Competition in Brussels to discuss ideas and concepts regarding the data to be collected. The final data collection scope and hence the definitive structure for delivery of the data will be re-fined and agreed upon between DG Competition and the Contractor within 4 weeks after signing the contract.
- (25) According to the predetermined structure, as amended and finalised within four weeks after signing the contract, the Contractor shall complete a test-pilot phase of the assignment within three months after signing the contract. The data to be delivered within the context of the test-pilot phase shall cover a full year period but never less than 6 months' worth of data. The Contractor shall deliver and give a presentation and practical demonstration of the test pilot data to DG Competition staff in Brussels within the first three months of the project. Any comments for improvements by the Commission must be taken into account for the further collection of data and the final version of the data delivery.
- (26) The Contractor will deliver the final data in the pre-defined and agreed format and structure and give a presentation and practical demonstration to DG Competition staff in Brussels within nine months after signing the contract.

6. PLACE OF PERFORMANCE

- (27) The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender. Meetings with DG Competition staff and the tasks under the second phase of the contract, however, will take place at DG Competition premises in Brussels.

7. VOLUME

- (28) The total budget of the contract, including all costs (inclusive, but not limited to: travel and incidental expenses, acquisition of software if necessary, acquisition of data use rights if applicable) cannot exceed Euro 145,000 for its total duration. Travel and subsistence will not be reimbursed separately.
- (29) The tenderer should be aware that the contract will be awarded to the tender offering the best value for money.

8. TERMS OF PAYMENT

- (30) Payments shall be made in accordance with Articles I.4 and II.15 of the draft service contract (annex II to the invitation to tender).

9. EVALUATION AND AWARD

9.1. Evaluation steps

- (31) The evaluation is based on the information provided in the submitted tender. It takes place in three steps:
- (a) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
 - (b) Selection of tenderers on the basis of selection criteria
 - (c) Evaluation of tenders on the basis of the award criteria
- (32) Only tenders meeting the requirements of one step will pass on to the next step.

9.2. Exclusion criteria

- (33) All tenderers shall provide a declaration on their honour (see Annex III to the invitation to tender), duly signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in the Annex III.
- (34) The declaration on honour is also required for identified sub-contractors whose intended share of the contract is above 20 %.
- (35) The successful tenderer shall provide the documents mentioned as supporting evidence in the Annex III before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender and to identified sub-contractors whose intended share of the contract is above 20%.

9.3. Selection criteria

- (36) Tenderers must provide evidence of economic, financial, technical and professional capacity to carry out the work subject to this call for tender. Tenderers who do not provide the documentation specified, or who are judged, on the basis of the documentation provided, not to have fulfilled the criteria specified below, will be excluded.
- (37) The evidence requested should be provided by each member of the group in case of joint tender and identified sub-contractor whose intended share of the contract is above 20%. However a consolidated assessment will be made to verify compliance with the minimum capacity levels.
- (38) The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Commission that it will have at its disposal the resources necessary for

performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

9.3.1. *Economic and financial capacity*

- (39) To be eligible, the tenderer must have the economic and financial capacity to perform the tasks required in this call for tender. Tenderers (i.e. in case of joint tender, the combined capacity of all members of the consortium and identified sub-contractors) must provide evidence that they have the economic and financial capacity to perform the tasks continuously and satisfactorily throughout the envisaged lifetime of the contract.
- (40) The following evidence should be provided:
 - (a) Copy of the profit & loss account and balance sheet for the last two years for which accounts have been closed,
 - (b) Failing that, appropriate statements from banks,
 - (c) If applicable, evidence of professional risk indemnity insurance.
- (41) If, for some exceptional reason which the Commission considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Commission considers appropriate. In any case, the Commission must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

9.3.2. *Technical and professional capacity*

- (a) Criteria relating to the tenderer:
 - (42) The tenderer (in case of a joint tender the combined capacity of all tenderers and identified sub-contractors) must comply with the following criteria:
 - The tenderer must prove experience in the field of competition policy, with a proven experience in projects of a similar size and coverage.
 - The tenderer must prove experience of working in English.
 - The tenderer must prove experience in data collection, with a proven experience in projects of a similar size and coverage.
- (b) Criteria relating to the team delivering the service:
 - (43) The team delivering the service shall include, as a minimum, the following profiles:
 - Project Manager: At least 10 years' experience in competition policy, with a particular focus on merger control. The manager would also need to have a proven experience in project management, including overseeing project delivery and quality

control of delivered service in projects of a similar size and coverage.

- IT expert with proven professional experience in the field of data collection and XML data format.
- Team for data collection/analysis/synthesis: the team leader should have professional knowledge of the English language (having already authored reports in the English language) and at least someone in the team should have solid knowledge of French, German, Italian and Spanish, and proven experience in data collection techniques.

(b) The following evidence shall be provided to fulfil the above criteria:

- List of the relevant services provided in the past three years, with the sums, dates and recipients, public or private. The most important services shall be accompanied by certificates of satisfactory execution, specifying that they have been carried out in a professional manner and have been fully completed;
- The education and professional qualifications of the persons who will provide the service for this tender (CVs) including the management staff;
- Detailed description of the resources available to perform the contract: infrastructure, equipment, personnel etc.

9.4. Award criteria

(44) The contract will be awarded based on the best value for money and the selected tenders will be evaluated according to the following criteria and points will be scored against each quality criterion. The total number of points is one hundred.

(a) Proposed data collection methodology (25 points – minimum threshold 50%)

(45) The quality of the chosen methodology for data collection and analysis methods will be assessed as well as the reasoning why a specific methodology has been chosen.

(b) Proposed data delivery approach (15 points – minimum threshold 50%)

(46) The approach taken to deliver the collected data in the predefined format and structure will be assessed in light of their implications for the exploitation of the data by DG Competition.

(c) Time scope of database (20 points – minimum threshold 50%)

(47) The time scope of database will be an important criteria in selecting a tender. A time period coverage of 8 years will give 13 points; each additional year will give 1 extra point up to maximum of 15 years coverage.

(d) Data scope of the database (20 – minimum threshold 50%)

- (48) A tender proposal that covers all the data described in paragraphs (17) and (18) will give 15 points. A tender proposal that does not cover all the data described in paragraphs (17) and (18) will give less than 15 points and the further from the full list in paragraphs (17) and (18), the lower will be the score. A tender proposal that covers and exceeds all the data described in paragraphs (17) and (18) will give 20 points.

(e) Organisation of the work (10 points – minimum threshold 50%)

- (49) The way the work programme of the team and the completion schedule is matched will be assessed under this criteria. A well-planned work programme, with intermediate deliverables that yield a final product within the desired schedule will be preferred.

(f) Quality control system (10 points – minimum threshold 50%)

- (50) This criterion will assess the quality control system of the proposed methodology for assuring (a) a high quality of the collected data and (b) a high quality of the data delivery.
- (51) The tender offering the best value for money will be determined on the basis of the price and quality of the tender, by calculating the final score according to the following formula, in which the quality of the tender has a weighting of 70 %, and 30 % weighting is given for price:

$$\text{Score for tender x} = \frac{\text{cheapest price}}{\text{price of tender x}} * 100 * 30 \% + \frac{\text{Total quality score (out of 100) for all award criteria of tender x}}{100} * 70 \%$$

- (52) Offers which score a total of less than 60% for the quality criteria will be rejected. In addition, any offer which scores below 50% of the maximum number of points available for any one criterion will be rejected.

9.5. Technical offer

- (53) The technical offer must cover all aspects and tasks required in the technical specification and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

9.6. Financial offer

- (54) The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be

revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation.

- (55) Prices must be quoted free of all duties, taxes and other charges, i.e. also VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.
- (56) The quoted price must be a fixed amount which includes all charges (including travel and subsistence).
- (57) In order to facilitate the assessment of the price, the tenderer should specify for each category of staff to be involved in the project: the total labour costs; the daily rates and total number of days (man-days) each member of staff will contribute to the project; other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.
- (58) Costs incurred in preparing and submitting tenders are borne by the tenderers and cannot be reimbursed.

10. INFORMATION ON TENDERING

10.1. Participation

- (59) Participation in this tender procedure is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement¹¹ concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

10.2. Contractual conditions

- (60) The tenderer should bear in mind the provisions of the draft contract which specifies the rights and obligations of the Contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits. By submitting an offer the tenderer accepts the conditions of this contract.

10.3. Joint tenders

- (61) A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include sub-contractors in addition to the joint tenderers.
- (62) In case of joint tender, all economic operators in a joint tender assume joint and several liabilities towards the Commission for the performance of the contract as a whole. Nevertheless, tenderers must designate a single point of contact for the Commission.
- (63) After the award, the Commission will sign the contract either with all members of the group, or with the member duly authorised by the other members via a power of attorney.

¹¹ See http://www.wto.org/english/tratop_E/gproc_e/gp_gpa_e.htm.

10.4. Subcontracting

- (64) Subcontracting is permitted in the tender but the Contractor will retain full liability towards the Commission for performance of the contract as a whole.
- (65) Tenderers must give an indication of the proportion of the contract that they intend to subcontract.
- (66) Tenderers are required to identify sub-contractors whose share of the contract is above 20%.
- (67) During contract execution, the change of any sub-contractor identified in the tender will be subject to prior written approval of the Commission.

10.5. Content of the tender

- (68) The tenders must be presented as follows:
 - Part A: Identification of the tenderer (see section 10.6 below)
 - Part B: Evidence for exclusion criteria (see section 9.2)
 - Part C: Evidence for selection criteria (see section 9.3)
 - Part D: Technical offer (see section 9.5)
 - Part E: Financial offer (see section 9.6)

10.6. Identification of the tenderer: legal capacity and status

- (69) The tender must include a cover letter signed by an authorised representative of the tenderer presenting
 - (a) the name of the tenderer (including all entities in case of joint offer),
 - (b) identified sub contractors if applicable, and
 - (c) the name of the single contact person in relation to this tender.
- (70) If applicable, the cover letter must indicate the proportion of the contract to be subcontracted.
- (71) In case of joint tender, the cover letter must be signed by a duly authorised representative for each tenderer, or by a single tenderer duly authorised by other tenderers (with power of attorney).
- (72) Sub-contractors must provide a letter of intent stating their willingness to provide the service foreseen in the offer and in line with the present tender specification.
- (73) In order to prove their legal capacity and their status, all tenderers must provide a signed Legal Entity Form with its supporting evidence. The form is available at http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm.

- (74) Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct Contractors) must provide the form but are not obliged to provide the supporting evidence.
- (75) The tenderer (or the single point of contact in case of joint tender) must provide a Financial Identification Form and supporting documents. Only one form per offer should be submitted (no form is needed for sub-contractors and other joint tenderers). The form is available at http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm.
- (76) Tenderers must provide the following information if it has not been included with the Legal Entity Form:
- (a) For legal persons, a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
 - (b) For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.