



EUROPEAN COMMISSION
DIRECTORATE-GENERAL COMPETITION

Principal Adviser

CALL FOR TENDERS
COMP/2015/019

Economic impact of competition policy enforcement
on the functioning of telecoms markets in the EU

TENDER SPECIFICATIONS

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Annex I: List of possible case studies

1. Purpose and context of the contract

1.1.Objectives of EU telecoms policy

European citizens and businesses rely more and more on convenient, reliable and high quality telecoms networks and services. Today there are more than 250 million daily internet users in Europe, and mobile phone use has become part of daily life. The competition rules work side by side with regulation specific to the telecoms sector to bring innovative, affordable services to European consumers.

The European growth agenda identifies the availability of affordable, secure and sustainable telecommunication network services for EU citizens and enterprises as one of its priorities. The Commission's Flagship Initiative on a Digital Agenda for Europe, launched in August 2010 as part of the growth agenda, sets out the Commission's priorities in the field of the digital economy and highlights the creation of a single market for telecoms services as a vital tool to regain progress lost during the economic crisis.

In order to encourage the creation of a fully integrated EU digital market, a stable regulatory environment for telecoms markets is required. The EU telecoms regulatory framework as presented in the 2009 Reform Package aims to ensure such a stable regulatory environment thereby stimulating growth, innovation and user choice. The success of the Reform Package depends on the timely and proper implementation of the regulatory framework (including a framework directive¹ plus four specific directives) into national law. By the end of 2013, all EU Member States had notified the full transposition of the revised telecoms framework into national law. The effective implementation of the corresponding national laws and regulations ensures a predictable and competition-friendly environment for the benefit of users of telecoms services. It also ensures a level playing field for market participants. By promoting and safeguarding competition in the electronic communications markets in the EU, EU telecoms policy aims to foster investment in next generation access networks and to further the development of the single market.

¹ Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009.

1.2. Current situation in EU telecoms market

Today, the EU telecoms market is fragmented into 28 separate national communications markets, each with a limited number of players. Most operators are active in one or only a few Member States and no operator is present in more than half of the Member States. Telecoms operators have national strategies even when they form part of larger multinational groups.

Existing EU rules on authorisations, regulatory conditions for access to networks, spectrum assignment and consumer protection are implemented in diverging ways. This patchy regulatory framework raises barriers to entry and prevents operators from providing integrated cross-border services to the detriment of consumers. This is the reason why the Juncker Commission has made it a priority to remove such regulatory barriers and push for the creation of a Digital Single Market.

1.3. Regulatory and competition policy interventions

The European Commission has used both regulatory and competition policy instruments to improve market functioning and telecoms industry performance in terms of competitiveness and the ability to offer consumers better service at lower prices.

The current regulatory framework for electronic communications (in force since 2002 and updated in 2009) has successfully liberalised previously monopolistic national markets and reduced barriers to entry, promoting effective competition and creating common principles for electronic communications markets across the EU. The main economic regulation provisions of the framework are based on market analysis by national regulatory authorities (NRAs) which impose ex-ante remedies to ensure effective competition in the presence of significant market power (or dominance) of one or more operators.

As opposed to sector regulation (access regulation) the enforcement of antitrust rules takes place ex post. Antitrust rules are always applicable regardless of whether or not there is sector regulation, as the Court of Justice has confirmed.

By safeguarding a level playing field in telecoms markets and facilitating market access, the European Commission has facilitated the expansion of telecoms networks and encouraged innovation in terms of telecoms services offered.

1.4. Contribution of the competition policy enforcement to EU telecoms policy objectives

Competition policy enforcement in the EU can take the form of merger control, antitrust policy (including the policing of cartels and other agreements and the abuse of a dominant position) and the control of support (State aid) for companies from Member State governments. Merger control and antitrust policies aim to prevent price increases and reductions in quality of service associated with an increased concentration of supply and the possible abuse of a dominant position on the telecoms market. State aids, on the other hand, tend to be targeted at stimulating investments in telecoms infrastructures and more in particular at encouraging the rapid deployment of broadband networks. The role of State aid control is to prohibit certain types of State aid that distort competition while allowing well-designed aid aimed at addressing market failures and achieving the EU's broad objectives. In this way, State aid control should help ensure a widespread and affordable access to high-speed Internet infrastructure and services, amongst other objectives. The impact of merger control and antitrust policies, on the other hand, will primarily impact the competitiveness and consumer welfare objectives.

Given the concerns about the continued concentration of supply in national telecoms markets, the European Commission and the NCAs have been vigilant when controlling **mergers**. For example, the Commission was concerned that the 2006 acquisition of O2 by Telefónica would result in distortions of competition in the market for roaming services, in particular in the UK. In response to such concerns Telefónica agreed to leave the alliance of the largest incumbent network operators in the EEA thereby removing the threat of significant cost increases for non-members of the alliance. Similarly, commitments by the merging parties removed the Commission's concerns that the 2010 merger of Orange UK and T-Mobile UK would endanger the viability of 3UK, the smallest mobile network operator in the UK. Also, the Commission decided to clear the 2012 acquisition of the Austrian mobile phone operator Orange by H3G only after submission of remedies ensuring wholesale access to the H3G network.

In **antitrust**, the European Commission fined the Spanish incumbent telecoms operator Telefónica for the abuse of its dominant position. The Commission's 2007 decision found that for five years Telefónica had imposed unfair prices, which took the form of a margin squeeze between the wholesale prices it charged to competitors and retail prices charged to customers.

This weakened Telefónica's competitors, reliant on Telefónica's wholesale network, because they were forced to make losses if they wanted to match Telefónica's retail prices. Similarly, the Commission imposed a fine on Telekomunikacja Polska (TP), the Polish incumbent telecoms operator, for an abuse of a dominant position in the Polish broadband market. The 2011 decision found that for more than four years Telekomunikacja Polska had refused to grant competitors access to its wholesale products. In 2013, the Commission fined Telefónica and Portugal Telecom for agreeing not to compete with each other in their respective home markets.

Although the European Commission watches the development of broadband markets carefully, it does not uphold all complaints against incumbent operators. In July 2010, for example, the Commission decided to reject, for lack of Community interest, a complaint by Vivendi against France Télécom relating to an alleged abuse of a dominant position on the French broadband and telephone subscription markets.

In the telecoms sector, the **State aid** tool has been most frequently used to help bring broadband to rural and remote regions (in Germany and Spain, e.g.), where telecoms firms often do not offer broadband services because it is not profitable to do so. The European Commission tends to support such aids because they are in line with its objective of providing broadband to all European citizens. However, when State aids lead the market distortions the Commission's State aid control will be stricter. The Commission's examinations of the abovementioned State aid schemes aimed to make sure that the State aid would be used only to the extent necessary. Similarly, the Commission has accepted aid schemes that promote R&D and innovation (in Spain and Poland, e.g.).

1.5.Related studies

The current study is part of an effort by the Competition Directorate General to evaluate the economic impact of its policy interventions. As part of this effort, it is currently carrying out (in collaboration with the NCAs most concerned) two ex-post evaluations of merger decisions in the telecoms sector: the T-Mobile – tele.ring and T-Mobile – Orange merger decisions. The current study is broader in scope, investigating not only merger case decisions but also antitrust and State aid decisions as well as possible complementarities. In this sense it is similar in nature to a study on the "Economic impact of enforcement of competition policies on the functioning of energy markets", which is close to completion. Both studies look into

the economic impact of competition policy interventions in network industries (i.e. the telecoms and energy industries) from a case study perspective.

2. Subject of the contract and task description

2.1.Objectives of the study

The enforcement of EU competition policies (including merger control, antitrust enforcement and State aid control) may contribute to better functioning telecoms markets, by prohibiting anti-competitive conduct and mergers in the interest of consumers and by eliminating State aids which create market distortions. As explained above, the Commission has taken a number of decisions in these areas.

The **objective** of the study is to describe and evaluate the impact of competition policy enforcement activities by the European Commission on: (1) the functioning of EU telecoms markets; and (2) the implementation of the EU regulatory framework aimed at market opening and improved market access. This evaluation will be based on case studies of a limited number of Commission decisions, which implies that the conclusions drawn will pertain to such decisions. Particular emphasis should be placed on the empirical strategy to identify causal effects rather than just correlations amongst the variables of interest.

The study report will, on the one hand, provide sound evidence on the economic impact of specific case decisions with a view to improving the effectiveness of the Commission's competition policy implementation practice, and on the other hand, serve to inform the general public about the effects of competition policy enforcement activities in the telecoms sector ('policy advocacy').

2.2.Outline of the study content

The final report will include an introductory section describing the context and objectives of the study.

A short literature review will present the main relevant academic publications and reports from competition and regulatory agencies. The review will focus on microeconomic case studies, preferably of a quantitative nature, on the impact of competition policy interventions on the functioning of telecoms markets as well as on case studies examining the

complementarities between EU competition and regulatory policies in the telecoms sector. The review shall also include papers analysing the impact of competition policy enforcement on performance and complementarities between competition and regulatory policies in network industries more generally, if such papers would allow drawing lessons for the present study. A more detailed literature review including a full list of references shall be provided in a separate annex. This more detailed literature review shall comprise at least 50 related academic publications as well as one or more tables summarising: (1) the main questions; (2) the methods applied; (3) the results claimed; and (4) critical remarks on each of the reviewed studies.

The core of the study report shall be a case study analysis of the impact of competition policy enforcement on the functioning of fixed and mobile telecoms markets in the EU, including broadband services. A variety of analytical tools must be used within the case studies selected, including descriptive data analysis, econometric and various ex post evaluation techniques. Such methods should permit establishing a causal relationship between competition interventions and outcomes. However, the description of the different methods used and their strengths and weaknesses should be relegated to an annex to the report.

The core of the study report shall consist of two main parts:

I. Description of:

- a. Competition policy enforcement in the telecoms sector over the past 25 years (i.e. since the start of liberalisation process). Competition policy decisions to be considered shall include all important merger decisions (i.e. prohibitions, Phase I and Phase II remedies as well as Phase II withdrawals); commitment and prohibition decisions in antitrust; cartel policy interventions including settlement and prohibition decisions; and important State aid interventions. The description of competition policy enforcement shall consider in particular (1) the competition problems addressed; (2) the market characteristics that gave rise to such problems; and (3) the policy instruments used to tackle the different competition problems identified.
- b. The functioning of fixed and mobile telecoms markets, including broadband services, in the EU. Market functioning must be assessed using different indicators of competition (as measured by market concentration or mark-ups, e.g.) and performance. The description of performance must focus on outcome indicators which are relevant for consumers and businesses, such as the level of prices for communications and broadband services, the availability of infrastructure providing high-speed connections, the take-up of such

connections by consumers and businesses and the quality of the services delivered (e.g. broadband speeds).

- II. Case studies (using quantitative and if appropriate, qualitative ex post evaluation techniques, including surveys and interviews, structural model simulations, reduced form parameter estimates, and counterfactual impact evaluation techniques such as the difference-in-differences method) investigating the impact of a maximum of five important decisions (including a maximum of one State aid decision) taken by the European Commission over the last 15 years on changes in the regulatory framework and on market functioning.

The concluding section must highlight the main study results and present the consultant's recommendations.

2.3.Scope of the study

The study will describe and evaluate the impact of competition policy enforcement activities, on: (1) the functioning of fixed and mobile telecoms markets, including broadband services; and (2) changes in the EU regulatory framework aimed at market integration and market access (including regulatory reforms affecting local loop unbundling, infrastructure access, interconnections between national markets, and tariff setting). The case studies should only consider enforcement activities by the European Commission over the past 10 years. Sufficient time must have passed in order to be able to observe the impact of decisions taken.

The case studies shall be selected amongst Phase I merger decisions with remedies, Phase II merger decisions, merger prohibition decisions, important antitrust and cartel decisions, as well as decisions in the area of State aid that significantly affect market functioning in the fixed and mobile telecoms markets, including broadband services (see Commission's suggestions in Annex I to these tender specifications; the tenderer is free to propose other important decisions to be investigated).

The tender must include proposals for between two and five case studies. The study will include at least one case study on the impact of a selected competition decision on market functioning and at least one case study on the impact of a selected competition decision on the design, implementation and enforcement of sector regulations.

The case studies will address key competition problems in the fixed and mobile telecoms markets, including broadband services, and assess the broader impact (including on the

conditions of competition but not exclusively) of the competition policy decisions taken by the Commission to address such problems. The competition problems to be analysed using quantitative methods may be related to the following issues:

- Risk of foreclosure under antitrust rules. Such foreclosure by incumbents may take the form of a margin squeeze.
- National fragmentation of EU telecoms market resulting in high cross-country price dispersion and excessive roaming rates.
- Distortions of competition in the specific State aid decision under investigation. Such distortions may result from State support aimed at ensuring the availability of broadband in rural and remote regions and at raising the use of broadband services more generally.
- Economic benefits of State aid decisions in terms of investment and overall consumer benefits. The study will not consider the compatibility of the State aid under EU rules.

Annex I to these tender specifications lists merger, antitrust and State aid decisions that the Commission suggests as possible subjects for a case study. The tender must offer specific proposals for the case studies to be carried out and explain the various criteria that were used to select the case studies. The case studies proposed must investigate the selected decision within the context of other, related decisions, be they in the area of mergers, antitrust or State aid. The tender must also describe the different methodologies that the tenderer intends to use to conduct the case studies. The final selection of competition decisions to be used in the case studies is subject to confirmation by the Commission at the meeting following submission of the inception report.

The study will cover the whole supply chain of telecoms services, including both wholesale and retail markets for voice, SMSs and data packages as well as broadband services. As appropriate, the impact on national, cross-border and European markets shall be considered.

2.4. Study questions

A. Description of context

1. Can one observe a change in competition policy enforcement (in terms of case investigations, competition rules and guidelines, sector inquiries, market studies and interactions with regulatory authorities) affecting telecoms markets in the EU over the past two decades?

2. Can one observe a change in the functioning of telecoms markets in the EU over the past two decades? Can one distinguish between changes:
 - a. In the conditions of competition in terms of number and types of operators, entry and exit, market opening, degree of local loop unbundling, market concentration, mark-ups, ease of switching for customers, etc.
 - b. In performance in terms of productivity, investment in telecoms infrastructure and innovation, prices and quality of services, customer satisfaction, etc.

B. Effectiveness of competition policy enforcement

3. Has the enforcement of competition policy decisions in the telecoms sector contributed to better functioning telecoms markets? To what extent? Can one distinguish between:
 - a. Improvements in the conditions of competition in terms of number of competitors, entry and exit, market opening, degree of local loop unbundling, market concentration, mark-ups, ease of switching for customers, etc.?
 - b. Improvements in the performance of the markets concerned by the decisions in terms of productivity, investment in telecoms infrastructure and innovation, prices and quality of services, customer satisfaction, etc.?
4. Do competition case investigations and case decisions affect the design of sector regulations and the enforcement of such regulations?
5. Is there complementarity (in terms of objectives and effects) between competition and regulatory policies affecting the functioning of the telecoms markets? To what extent have we observed an increase in complementarity over the past two decades? Please explain.

3. Methodology

The tender will have to include an outline of the methodology to be used in answering the above study questions in the best possible way in the given timeframe and with the likely access to information. Two types of analysis are expected to be provided: a descriptive data analysis and detailed case studies. It is suggested to spend 25% of the resources on descriptive data analysis and 75% on the case studies.

Study questions 1 and 2 shall be addressed by way of **descriptive data analysis**, providing an overview of changes in competition policy enforcement and telecoms market functioning over the past two decades. In particular, the tender shall describe how the study will present the different competition policy interventions made over the course of the past two decades in a comprehensive fashion, taking into account the specific characteristics of the fixed and mobile telecoms market, including broadband. The focus on the descriptive analysis will be on developing a typology of competition policy interventions in the telecoms sector, looking into their objectives, the competition problems being addressed and their impact on market performance. The tender is expected to specify which data will be used to establish such a typology.

Study questions 3 through 5 shall be answered using **descriptive data analysis and case studies**. A crucial question is the identification of causal contribution of competition enforcement decisions to observed market outcomes. The tenderer shall describe and explain in detail its strategy to identify the causal link between competition policy decisions and outcomes, the chosen methodology and data to be collected.

The gathering of the **data** required for the descriptive analysis and the case studies is part of the tasks of the contractor. The tender must include a detailed description of the data required and data sources to be used. A sufficient budget should be set aside for this purpose, which must be included in the total price for the study. The tender shall specify what are the terms and conditions, including in particular the price, for the acquisition of the data. The tender must also justify its proposals for the data to be used in the study.

The case studies shall be based on the exploitation of one or more integrated databases (to be constructed by the contractor) containing all the variables that are relevant for the case study. As part of the study, the Commission shall also be provided with the database(s) and with all the relevant programming codes that would make the case studies replicable if needed.

The **case studies** will aim to establish a causal relationship between the competition policy intervention and the outcome in terms of price increase avoided, reduction in quality of services prevented or investment in telecoms infrastructure encouraged. Counterfactual impact analysis shall be used to determine whether a given intervention produces the desired

effects in terms of outcomes. The tender must suggest an appropriate counterfactual impact evaluation technique (such as e.g. the difference in-differences method) as well as an identification strategy allowing the calculation of unbiased estimates of the effects of the decision under investigation. If possible, suitable treatment and control groups should already be identified in the tender. The tender must consider as well whether the data required for the proposed analysis are indeed available.

The choice and a detailed description of the methodologies to be applied must form part of the tender submitted. The methodological approach must be based on recognised descriptive, analytical and case study techniques and be described in detail in the tender, taking into account the specifications therein. The tender shall include a statement confirming the feasibility of the methodologies proposed.

A reasoned explanation must be provided of how the proposed methodology allows responding to the study questions listed above. There must therefore be a clear link between the study questions and the corresponding methodology proposed. The tender may further propose sub-questions that the study should address in order to lay a basis for answering the study questions identified, in consultation with the Commission.

In addressing the study questions, quantitative indicators must be sought and used as far as possible. The use of both structural modelling and counterfactual impact evaluation techniques is encouraged. The contractor must support its findings by explaining the degree to which these are based on gathered opinions of stakeholders, own analysis and objectively verifiable evidence. Where opinions are the main source, the degree of consensus and the steps taken to test/double-check the opinions must be given.

The contractor is expected to discuss potential biases arising from the methodology applied, the expected direction in which these biases may distort the results and their likely magnitude.

The Commission will, within the limits set by the principle of professional secrecy and the protection of personal data and business secret, endeavour to make available to the contractor the text of relevant decisions and, upon request, the relevant parts of the documents contained in its case file. The Commission will however retain full discretion in the choice of documents it makes available to the contractor.

4. Reporting and deliverables

4.1. General reporting requirements

Each report (except the final version of the Final Report) shall have an introductory page providing an overview and orientation of the report. It shall describe what parts of the document have, on the one hand, been carried over from previous reports or have been recycled from other documents, and on the other hand, which parts represent progress of the study in comparison to the work plan.

All reports must be drafted in English and submitted according to the timetable below to the Commission. All submitted draft reports must be written with sufficient clarity. Text files must be provided in Microsoft® Word for Windows format, while data files must be provided in Microsoft® Excel. Additionally, besides Word, the Final Report must be delivered in Adobe® Acrobat pdf format and in 10 hard copies.

4.2. Inception report

The inception report shall describe how the methodology proposed by the Contractor is going to be implemented in detail, after e.g. having further examined the sources of information that will be used for the study.

The report shall also contain:

- A detailed work plan to be agreed with the Commission at the inception meeting;
- The short review of the relevant literature (including both academic publications and reports from competition and regulatory agencies);
- Further developed proposals for the case studies. The selection of the two to five case studies to be pursued must be agreed with the Commission at the inception meeting;
- A draft annotated outline of the final report.

4.3. Interim report

The interim report is to be produced after the desk and field research has been completed, and should, to the extent possible, include some preliminary conclusions. The report must as a minimum provide:

- An overview of the status of the project;

- The introductory section, which presents the objectives of the study and the broad approach taken to achieve such objectives;
- The short review of the relevant literature (including both academic publications and reports from competition and regulatory agencies);
- The descriptive data as well as the data analysis responding to study questions 1 and 2 above;
- A first draft of the case study reports;
- A description of problems encountered and solutions found;
- An assessment of the data and other sources of information, whether they meet expectations and will provide a sound basis for responding to the study questions;
- A conclusion whether any changes are required to the work plan, or any other solutions should be sought in order to ensure that the required results of the study are achieved. If any such issues are to be identified, they must have been cleared beforehand in the meeting with the Commission;
- A proposal for the final structure of the Final Report, as well as a structure of the Executive Summary.

The interim report shall not exceed 50 pages, annexes excluded.

4.4.Draft final report

This document shall deliver the results of all tasks covered by these tender specifications, and must be clear enough for any potential reader to understand.

The structure of the report shall follow a broad classification into the following parts:

- Main report: The main report must be limited to 70 pages and contain a description of the subject matter and the context giving rise to the study questions listed above. A short literature review shall present the state of the art in terms of the responses given to the study questions. However, the main report must focus on giving argued responses to the study questions, drawing broader conclusions from the analyses and case studies carried out and making recommendations on how to increase the efficiency and effectiveness of the EU's competition policy enforcement tools.
- Annexes: These must collate the technical details of the study, including: (i) a more extended review of relevant academic publications and reports from competition and regulatory agencies (including descriptive and quantitative case studies); (ii) the more detailed description of the different methods used to respond to the study questions,

including an analysis of their strengths and weaknesses; (iii) annexes presenting the specific results of each case study; and (iv) any additional tables or graphics, and references and sources.

Given that the study may rely on some data that is covered by rules on professional secrecy, the contractor will also be required to produce the main final report and most of the annexes in a publishable way, only containing non-confidential information.

All confidential information must be concentrated in one or two confidential annexes that will be provided to the Commission but will not be published.

4.5.Final report

The Final Report follows the same format as the draft Final Report. It needs to be edited by a **native English speaker** to ensure publishable quality (this editing task may be subcontracted).

Furthermore, it is accompanied by an **Executive Summary** and an **abstract** as explained in section 4.8 below. The Executive Summary summarises the study's main conclusions per study question, the main evidence supporting them and the recommendations arising from them. After having been agreed with the Commission, it must be translated into French and German by a native speaker (this translation task may be subcontracted). The purpose of the abstract is to act as a reference tool helping the reader to quickly ascertain the study's subject.

The Final Report must take into account the feedback from the Commission on the Draft Final Report, insofar as these do not interfere with the autonomy of the contractor in respect of the conclusions they have reached and the recommendations made.

As for the Draft Final Report, the contractor will draft the main final report and most of the annexes in a publishable way, only containing **non-confidential** information. All confidential information must be concentrated in one or two confidential annexes that will be provided to the Commission but will not be published.

The Commission may decide to publish the non-confidential version of the Final Report, the Executive Summary, the Abstract and the Annexes on the Internet.

4.6. Progress reports

Every month, the contractor will send by email progress reports which summarise on one page the progress of the study made with reference to the work plan. The contractor will report particularly on difficulties encountered and mitigation measures taken or suggestions for changes in the work plan to ensure that the required results are achieved. The Commission may decide to organise a conference call with the contractor if a progress report raises concerns about progress of the work undertaken.

4.7. Technical requirements of the final deliverable

All studies produced for the European Commission and Executive Agencies shall conform to the corporate visual identity of the European Commission by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo².

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the [Web Content Accessibility Guidelines 2.0](#) of the W3C.

For full details on Commission policy on accessibility for information providers, see: http://ec.europa.eu/ipg/standards/accessibility/index_en.htm

Pdf versions of studies destined for online publication should respect W3C guidelines for accessible pdf documents. See: <http://www.w3.org/WAI/GL/WCAG20-TECHS/pdf.html>

4.8. Content

4.8.1. Final study report

The final study report shall include:

- an abstract of no more than 200 words and an executive summary of maximum 6 pages in English, French and German;
- the following standard disclaimer:

² The Visual Identity Manual of the European Commission is available upon request. Requests should be made to the following e-mail address: comm-visual-identity@ec.europa.eu

- *“The information and views set out in this study are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”*
- specific identifiers which shall be incorporated on the cover page provided by the Commission.

4.8.2. Publishable executive summary

The publishable executive summary shall be provided in English, French and German, and shall include:

- the following standard disclaimer:

“The information and views set out in this study are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”

- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

4.9. Visual requirements

For visual requirements please refer to the template available in (annex IV to the invitation to tender). The cover page shall be filled in by the contractor in accordance with the instructions provided in the template. For further details you may also contact comm-visual-identity@ec.europa.eu.

5. Organisation

The contract will be managed by the team of the Principal Adviser on Ex-post Economic Evaluation of the European Commission's Directorate-General for Competition.

The Principal Adviser may consult other Commission services, either within the Directorate-General for Competition or in other interested Directorates General on:

- the provision of access to information or data required;
- support and monitoring of the work carried out by the contractor;
- assessment of the quality of the reports submitted by the contractor,

while ensuring that the contractor's independence is not compromised.

5.1.Meetings

It is expected that the contractor participates in 4 meetings [*kick-off, after inception report, after interim report, after draft final report*] in Brussels with the Commission. For each meeting the contractor will prepare a PowerPoint presentation. The meeting after the draft final report will take the form of a workshop to be organised by the contractor. Besides the contractor and the Commission, four outside experts (to be agreed between the Commission and the contractor) shall be invited to this meeting. The contractor will be responsible for paying any fees and travel costs charged by the outside experts. The aim of the workshop is to arrive at a more independent assessment of the quality of the draft final report.

5.2.Timetable

The indicative starting date (N) of the study contract is November 2015. The implementation of the contract will start after both parties have signed it. The period of execution of the contract is 10 months strict.

The following indicative timetable is envisaged, with 'N' being the date of signature of the contract by the last signing party:

| Deadline (from starting date) | Task |
|---|--|
| <i>Kick-off meeting</i> N + 2 weeks | Exchange of views between the Commission and the Contractor on the objectives, outline, scope and methodological approach of the study. |
| <i>Inception Report</i> N + 2 months | Contractor provides the Commission with the inception report . A meeting with the Commission is organised in Brussels at the latest two weeks after delivery of the report. |
| <i>Interim Report</i> N + 5 months | Desk and field research completed. Contractor provides the Commission with the interim report . A meeting with the Commission is organised in Brussels at the latest two weeks after delivery of |

| | |
|--|---|
| | the report. |
| <i>Draft Final Report</i> N + 7½ months | Contractor provides the Commission with the draft final report . A meeting with the Commission is organised in Brussels at the latest two weeks after delivery of the report. |
| <i>Final Report</i> N + 10 months | Taking account of the Commission' comments the contractor sends the final report and executive summary to the Commission. |

6. Place of performance

The place of performance of the tasks shall be the Contractor's premises and/or any other place indicated in the tender, with the exception of the Commission's premises. Meetings will be held in the Commission's premises in Brussels.

7. Volume

The budget of the contract, including all costs, travel and incidental expenses, cannot exceed Euro 300,000 for its total duration.

The tenderer should however be aware that the contract will be awarded to the tender offering the best value for money.

8. Terms of payment

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. Data handling and ethics

Reproduction of figures, quotation from texts, and other usage of published work must be appropriately acknowledged. If the work of others is to be included, the obligation of obtaining the necessary rights from the rights holders resides with the contractor. The contractor is responsible for appropriately acknowledging sources, the correctness of references. For further information, please refer to Articles I.8 and II.10 of the draft service contract (Annex II to the invitation to tender).

All data collected or included in the study as well as related software codes must be submitted in an electronic annex along with the interim and final reports.

Please refer to Articles I.8 and II.10 of the draft service contract (Annex II to the invitation to tender) for details on the exploitation of the results of the contract as well as the ownership of the results and intellectual and industrial property rights.

10. Absence of conflict of interests

The Contractor shall ensure that both their organisation and the individual experts proposed for this evaluation are not in a situation of conflict of interest regarding this specific assignment, and shall include a Declaration of absence of conflict of interest as part of their tender.

11. Evaluation of tenders and award

11.1. Evaluation steps

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- (1) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- (2) Selection of tenderers on the basis of selection criteria
- (3) Evaluation of tenders on the basis of the award criteria

Only tenders meeting the requirements of one step will pass on to the next step.

11.2. Exclusion criteria

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.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 10 %.

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 subcontractors whose intended share of the contract is above 10%.

11.3. Selection criteria

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.

The evidence requested should be provided by each member of the group in case of joint tender and identified subcontractor whose intended share of the contract is above 10%. However a consolidated assessment will be made to verify compliance with the minimum capacity levels.

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.

11.3.1. Economic and financial capacity

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 subcontractors) 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.

The following evidence should be provided:

- Copy of the profit & loss account and balance sheet for the last two years for which accounts have been closed,
- Failing that, appropriate statements from banks,
- If applicable, evidence of professional risk indemnity insurance;

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.

11.3.2. Technical and professional capacity

a. Criteria relating to the tenderer

The tenderer (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

- The tenderer must prove experience in the field of competition policy and EU telecoms policy. Evidence of relevant services provided in the past three years is required.
- The tenderer must have the appropriate study and research facilities in order to be able to perform the tasks described in these tender specifications.
- The tenderer must prove experience in descriptive and statistical analyses, quantitative impact evaluation techniques (including data collection, econometric modelling, counterfactual impact assessment) and the drafting of reports and recommendations. Evidence of relevant services provided in the past three years is required.

b. Criteria relating to the team delivering the service

The team delivering the service should include, as a minimum, the following profiles:

Project Manager: At least 10 years' experience in project management, including overseeing project delivery, quality control of delivered service in projects of a similar size and experience in management of teams of at least 5 people.

Language quality check: at least 2 members of the team should have native-level language skills in English or equivalent, as guaranteed by a certificate or past relevant experience.

Expert in competition policy: Ph.D and five years' professional experience in the field of competition policy.

Expert in telecoms policy: Ph.D and five years' professional experience in the field of telecoms policy.

Expert in quantitative evaluation techniques: Graduate degree and five years' professional experience in quantitative evaluation techniques.

Team for data collection: collectively the team should have knowledge and proven experience of 15 years in data collection techniques.

c. Evidence

The following evidence of the technical and professional capacity shall be provided to fulfil the criteria under a. and b. above:

- List of relevant services provided in the past three years, with 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;
- Detailed description of the resources available to perform the contract: infrastructure, equipment, personnel etc.;
- The educational and professional qualifications of the persons who will provide the service for this tender (CVs) including the management staff.

11.4. Award criteria

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.

| No | Quality criteria | Quality points |
|---------------------------------------|--|--|
| 1. | Proposed methodology and analytical tools | (30 points – minimum threshold 50%) |
| 2. | Relevance of the case studies proposed | (30 points – minimum threshold 50%) |
| 3. | Access to data required for the analysis | (20 points – minimum threshold 50%) |
| 4. | Organisation of the work | (20 points – minimum threshold 50%) |
| <i>Total number of points:</i> | | 100 |

The assessment of the "Proposed methodology and analytical tools" will consider whether the methodological approach for the descriptive analysis and the case studies are based on recognised descriptive, analytical, econometric and case study techniques. In addition it will consider the extent to which the proposed approach allows responding to the study questions identified in these tender specifications.

The assessment of the "Relevance of the case studies proposed" will consider the extent to which the proposed case studies allow drawing more general lessons on the interaction between competition policy enforcement and the functioning of EU telecoms markets (including via a better implementation of the EU regulatory framework aimed at market opening and improved market access).

The assessment of "Access to data required for the analysis" will consider whether the data required for the study have been clearly identified, whether such data are publicly available or otherwise accessible to the tenderer, and whether sufficient financial resources have been set aside for the purchase of such data (if needed).

The assessment of the "Organisation of the work" will consider in particular whether the study objectives can reasonably be achieved within the allotted time schedule given the resources to be devoted to the study project.

Tenders must score minimum 50% for each criterion or sub-criterion, and minimum 70% in total. Tenders that do not reach the minimum quality thresholds will be rejected.

After evaluation of the quality of the tender, the tenders are ranked using the formula below to determine the tender offering best value for money.

The total points for the above qualitative criteria will be compared to the price, and the contract will be awarded to the tender with the highest ratio between the total quality points divided by the price.

11.5. Technical offer

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.

11.6. Financial offer

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.

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.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence).

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.

Costs incurred in preparing and submitting tenders are borne by the tenderers and cannot be reimbursed.

12. Information on tendering

12.1. Participation

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 Procurement³ 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.

³ See http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

12.2. Contractual conditions

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.

12.3. Joint tenders

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

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.

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.

12.4. Subcontracting

Subcontracting is permitted in the tender but the contractor will retain full liability towards the Commission for performance of the contract as a whole.

Tenderers must give an indication of the proportion of the contract that they intend to subcontract.

Tenderers are required to identify subcontractors whose share of the contract is above 10%.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Commission.

12.5. Content of the tender

The tenders must be presented as follows:

Part A: Identification of the tenderer (see below)

Part B: Evidence for exclusion criteria (see section 11.2)

Part C: Evidence for selection criteria (see section 11.3)

Part D: Technical offer (see section 11.5)

Part E: Financial offer (see section 11.6)

12.6. Identification of the tenderer: legal capacity and status

The tender must include a cover letter signed by an authorised representative of the tenderer presenting

- the name of the tenderer (including all entities in case of joint offer),
- identified subcontractors if applicable, and
- the name of the single contact person in relation to this tender.

If applicable, the cover letter must indicate the proportion of the contract to be subcontracted.

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).

Subcontractors 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.

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 on:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

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.

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 subcontractors and other joint tenderers). The form is available on:

http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

- 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.

- For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.

Annex I: List of possible case studies

| State aid cases in telecoms | Case Number | Case Name | Year of decision | Budget |
|--|---|---|------------------------------|--|
| Aid schemes to promote broadband | N201/2006 and SA.27517 | National broadband project | 2008 and 2010, Greece | EUR 160 million and EUR 210 million, respectively |
| | N115/2008, N266/2008, N153/2009, N243/2009, N299/2010 | Federal and regional aid schemes to bring broadband to rural areas of Germany (+ amendments) | 2008, 2009 and 2010, Germany | EUR 141 m., EUR 45 million, EUR 42.75 m., EUR 80 million, EUR 57 million |
| | N73/2008 | Public support to broadband, digital TV, mobile infrastructures In rural areas of Spain | 2008, Spain | EUR 180 million |
| Aid schemes to promote R&D and innovation | N289/2006 | Aid to Innovation and Technological Development in the Information Technologies Sector in Madrid | 2006, Spain | EUR 50 million |
| | N405/2008 | Regional aid scheme for investments in energy, telecommunications infrastructure, R&D infrastructure and spa therapeutics | 2009, Poland | EUR 1018.675 million |

| Merger cases in telecoms | Case Number | Case Name | Year of decision and country(ies) mostly concerned |
|--|--------------------|---------------------------------------|---|
| Phase I with conditions and obligations | M.4035 | TELEFÓNICA / O2 | 2006, UK |
| | M.5650 | T-MOBILE / ORANGE | 2010, UK |
| Phase II with conditions | M. 6497 | HUTCHISON 3G AUSTRIA / ORANGE AUSTRIA | 2012, Austria |

| | | | |
|------------------------|--|--|--|
| and obligations | | | |
|------------------------|--|--|--|

| Antitrust cases in telecoms | Case Number | Case Name | Year of decision and country(ies) mostly concerned |
|------------------------------------|--------------------|-----------------------------|---|
| | AT. 38784 | Telefonica S.A. (broadband) | 2007, Spain |
| | AT. 39525 | Telekomunikacja Polska | 2011, Poland |