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DIRECTORATE-GENERAL COMPETITION  
Principal Advisor  
Ex-post Economic Evaluation of Competition Policy

**CALL FOR TENDERS**  
COMP/2015/020

Feasibility study on  
the microeconomic impact of enforcement of competition policies on innovation

**TENDER SPECIFICATIONS**

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## 1. Purpose and context of the contract

### 1.1.Link between competition policy and innovation

Productivity is the Achilles' heel of Europe's growth performance: during the 2008-2013 crisis period EU total factor productivity (TFP) fell by a dramatic annual rate of 0.7 percent<sup>1</sup>. Therefore, increasing the incentives for companies to engage in innovative activities, which can contribute to improve the EU's TFP performance, is a core objective of the EU growth strategy. It is all the more important since the EU's innovation performance has been on average rather sluggish over the past two decades. Competition policy, by increasing the pressures of competition, can contribute to raising companies' incentives to innovate.

Empirical work tends to corroborate the view that there is an inverted-U shape link between competition and innovation, with too little or too much competition reducing innovation. Moreover, the gap with the frontier of technology and the type of industry influence the relation between competition and innovation. The positive impact of competition on innovation is greater in 'neck to neck' industries, i.e. industries with the same technological levels, and for firms and industries close to the technology frontier. In such sectors, product market competition reduces pre-innovation rent, thereby increasing the incremental profits from innovation. This is known as the 'escape-competition effect'. But, for firms further behind the technology frontier in sectors with a high technology spread, competition reduces the post-innovation rents and thus their incentive to catch up with the current leader in the sector. In this framework, competition policy is particularly beneficial in industries with firms that are technologically advanced.

At the level of the individual firm, innovation is driven by the desire to make profits and to outperform rivals. It is therefore important to avoid policies which may deprive innovators of the expected fruits of their actions as this may reduce their incentives to innovate. However, it is also necessary to encourage continued innovation by technology leaders and to ensure that competing firms can challenge today's leaders. In the implementation of competition policy, a correct balance needs to be struck between, on the one hand, offering sufficient incentives to invest in R&D and innovation and respecting innovators' rights and, on the other hand, avoiding that dominant innovators delay the diffusion of their innovations and prevent competitors to innovate.

Some critics of competition policy often make the argument that competition policy enforcement may reduce incentives for innovation, particularly for companies active in innovative and R&D intensive industries. They argue that temporary monopoly positions in these markets are often inevitable. They also suggest that there is a risk that excessive or inappropriate competition policy interventions reduce the returns on investment in innovation to such an extent that it is no longer worthwhile for companies to invest in innovative activities. However, solid empirical evidence in support of such arguments is not provided as, at the firm-level, the impact of competition policy interventions on the innovative activities of firms concerned has rarely been investigated. The main objective of this study is to test the feasibility of such an empirical analysis.

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<sup>1</sup> See van Ark, B., (2014), "Total factor productivity: Lessons from the past and directions for the future", National Bank of Belgium, Working Paper Research n°271, <https://www.nbb.be/doc/ts/publications/wp/wp271en.pdf>.

## **1.2. Assessing the impact of competition policy on innovation**

The enforcement of competition law in the EU aims at creating conditions for innovation to flourish in the Single Market. Therefore, the task for competition policy is to develop a framework that neither impedes desirable innovation, nor permits market power to reduce technological progress.

In the area of State aids, the new R&D&I guidelines<sup>2</sup> facilitate the granting of aid measures by EU Member States in support of research, development and innovation activities. Similarly, competition agencies are taking innovation into account as a critical factor in their reviews of mergers and business practices that may be detrimental to competition.

In the area of antitrust and cartels (Article 101 TFEU<sup>3</sup> which prohibits firms to enter in anticompetitive agreements and Article 102 TFEU which prohibits the abuse of a dominant position), EU competition policy helps maintain a level playing field and allows avoiding that companies abuse their dominant positions by restricting the innovative process through anti-competitive practices. For example, the European Commission has investigated whether companies use their intellectual property rights (patents) to slow market entry by competitors. On the other hand, the Commission is well aware that companies may not be able to appropriate all of the benefits from their R&D expenditure because of possible spill-overs of their R&D output. Cooperation in the area of R&D may allow internalising these spill-overs, as well as putting together complementary skills and assets, thereby increasing R&D output and innovative performance. Therefore, efficiency-enhancing technology transfer agreements are, under certain conditions, exempted from the prohibition of anti-competitive practices (under Article 101(3) TFEU).

In EU merger control the important role of innovation in the analysis of the effects of proposed mergers on competition is recognised as well. The legal framework for assessing merger considers both the anticompetitive effects and possible efficiencies associated with R&D and innovation. On the one hand, the analysis of the effects of a proposed merger considers the harm to competition resulting from hampering innovation and on the other hand, it also takes into account potential efficiencies (basically, the ability of the merged entity to do better and/or cheaper R&D) which may positively affect innovative performance.

This feasibility study will focus on the impact of EU merger control and antitrust and cartel policy enforcement on innovation. Determining whether mergers or business practices promote or suppress innovation requires case-specific investigations. In European Commission practice, there have been a number of merger, cartel and abuse of dominance cases during which the innovation effects were considered during the investigative process. An ex-post analysis of the impact of some of these decisions on the innovative activity in the market concerned could be a first step to better understand the interaction between competition policy and innovation at the microeconomic level.

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<sup>2</sup> Framework for State aid for Research and Development and Innovation, OJ C 198 of 27.06.2014, p. 1, [http://ec.europa.eu/competition/state\\_aid/legislation/horizontal.html](http://ec.europa.eu/competition/state_aid/legislation/horizontal.html).

<sup>3</sup> Treaty on the Functioning of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

## **2. Subject of the contract and task description**

### **2.1.Objectives of the study**

The objective of the study is to test the feasibility of an empirical microeconomic analysis of the impact of competition policy enforcement on innovation using a case study approach.

More specifically, the feasibility study will review the economic and legal literature as well as competition policy practice in order to identify recurrent issues that affect competition in innovative markets. It will also discuss the existing empirical evidence regarding the impact on innovation of the European Commission's merger, antitrust and cartel decisions. On that basis, it will propose an approach to assess the impact of competition policy enforcement on innovation and will test this approach with a pilot case study.

### **2.2.Outline of the study content**

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

Part I will review the theoretical and empirical literature related to the relationship between competition policy enforcement (in the areas of mergers, cartels and antitrust) and innovation. The review shall include relevant academic publications and reports from competition and regulatory agencies. First, it will describe the economic arguments and theories associating the incentives to innovate with the enforcement of competition rules (i.e. EU and US rules on merger control, antitrust and cartel policy enforcement). Second, it will identify key features of innovative markets and the competition problems that may arise in them. Third, it will review recent competition cases in the EU and the US illustrating the relationship between competition policy enforcement and innovation. This literature review shall comprise of at least 50 related academic publications.

Part II will develop a case study approach to assess the microeconomic impact of competition policy decisions by the European Commission (in the areas of mergers, cartels and antitrust) on innovation. Based on the analysis of Part I, a number of testable hypotheses and questions to be investigated in the case studies will be defined. The framework within which these hypotheses will be tested may take the form of an econometric model, counterfactual impact analysis or be more qualitative in nature, depending on the outcome of the literature survey in Part I and the nature of the hypotheses to be tested.

Part III will test the approach proposed in part II with one or two pilot case studies that reflect key features of competition problems arising in innovative and R&D intensive markets. The case study may be a merger or antitrust case in which the parties claimed that the merger or the business practice offered important innovative benefits. In this case, the study will verify whether the parties' claims were justified ex-post and assess the consequences of the merger or the business practice for innovation by the parties directly concerned and in the market as a whole (i.e. including innovation by the parties' competitors). If the case study concerns a cartel investigation, the impact of the cartel's dismantling on innovation in the market concerned will be analysed.

On the basis of the above elements, the feasibility study will conclude by putting forward recommendations regarding (i) tools to be developed to better assess the impact of competition policy enforcement on innovation and (ii) further work to be done in this area.

The feasibility study shall provide suggestions to the Commission for methods/tools to be developed and used in order to gain a better understanding of the innovative impact of its policy interventions and to better inform the general public about the effects of competition policy enforcement activities in innovative markets ('policy advocacy').

### **2.3.Scope of the study**

The study shall describe and evaluate the impact of EU competition policy enforcement activities in the areas of mergers, cartel and antitrust on the innovation activities of the parties concerned and their competitors in the market as a whole. For the literature review, the study shall focus on relatively recent work (from 2000 onwards) in the EU and the US, except for very important contributions that are particularly relevant in the context of the present study. The case studies shall only consider enforcement activities by the European Commission in the areas of mergers (phase I with remedies or phase II), antitrust and cartels over the last 15 years and shall concern innovative and R&D intensive markets (such as pharmaceuticals, IT, telecommunications ...).

The tender must include motivated proposals for one case study in each of the three areas of competition policy (merger, cartel and antitrust) covered by the study. The case studies proposed must reflect key features of innovative markets and the competition problems that may arise in them (see shortlist of possible issues below). The tender must also indicate what analytical framework and methodological tools the tenderer would use if a particular case study were to be selected. The final selection of the competition decision(s) to be analysed in the one or two pilot case studies is subject to agreement of the Commission following the meeting on the inception report.

The issues to be analysed could be the following:

- Impact of a merger on the innovation activities of the parties concerned and their competitors: did the merger lead to efficiencies bringing positive effects on innovation or on the contrary, did it hamper innovation by competitors?
- Impact of a cartel dismantling on innovation in the market concerned: do we observe an increase in the innovation activities in the market after the cartel dismantling which can be attributed to the European Commission's intervention?
- Relation between antitrust enforcement and innovation: are the EU antitrust rules and procedures appropriate to deal with anti-competitive practices restricting the innovative process or, as often claimed by incumbents in R&D intensive industries, is there a risk that antitrust interventions reduce the incentives to invest in R&D and innovation by decreasing the return on such investment?

### **Study questions**

#### **Description of the main lessons to be drawn from the existing literature:**

1. What are the main economic arguments and theories contributing to explain the relationship between competition policy enforcement and incentives and capacity to innovate?

2. What are key features of competition problems arising in innovative and R&D intensive markets?
3. What are the testable hypotheses and questions to be investigated in the case studies?
4. What are the lessons to be drawn from existing ex-post evaluations of the impact of EU competition decisions on innovation in innovative and R&D intensive markets?

**Description of the main lessons to be drawn from the case studies:**

5. Has the enforcement of competition policy in innovative and R&D intensive markets contributed to a change in innovation activities in these markets? To what extent?
6. What are the mechanisms through which competition policy enforcement has an impact on innovation in innovative and R&D intensive industries?
7. How to help improve design and enforcement of competition policy in innovative and R&D intensive industries? Should innovative firms with substantial market power operating in R&D intensive industries be treated either more leniently or no more leniently than otherwise equivalent non-innovative firms and what are the theoretical or empirical arguments supporting the answer to this question? What are the key issues that case teams should seek to address when preparing decisions affecting innovative markets?

## **2.4.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. The methodological approach must be based on recognised descriptive, analytical and case study techniques and must be described in detail in the tender, taking into account the specifications therein. There must be a clear link between the study questions listed above and the corresponding methodology proposed. A reasoned explanation must be provided of how the proposed methodology allows responding to the study questions. The tenderer may further propose sub-questions that the study needs to address in order to lay a basis for answering the study questions identified above.

Two types of analysis are expected to be provided: a descriptive analysis and detailed case studies. It is suggested to spend 20% of the resources on descriptive analysis, 30% on the approach to be developed for the analysis of the pilot case studies, and 50% on the one or two pilot case studies.

Study questions 1 to 4 shall be addressed by way of **descriptive analysis**, providing an overview of the main lessons to be drawn from the existing theoretical and empirical literature on the link between competition policy enforcement and innovation. The literature review shall provide a critical assessment of the papers reviewed. A clear link shall be established between the lessons drawn from the literature review and the approach to be tested in the case studies. The literature review must also include 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.

Study questions 5 through 7 shall be answered using **descriptive analysis and pilot case studies**. A crucial question is the identification of causal contribution of competition enforcement decisions to observed innovation 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 one or two **pilot case studies** will aim to establish a causal relationship between the competition policy intervention and the outcome in terms of innovation of the parties concerned and their competitors in the market as a whole. 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 offer. The tender must consider as well whether the data required for the proposed analysis are indeed available.

In addressing the study questions, quantitative indicators must be sought and used as far as possible. The use of econometric estimation methods and counterfactual impact evaluation techniques is encouraged. The contract 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 also 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 gathering of the **data** required for the pilot 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 must be set aside for this purpose. 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 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.

### 3. Deliverables and technical requirements of the final report

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 logo<sup>4</sup>.

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.

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<sup>4</sup> 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](mailto:comm-visual-identity@ec.europa.eu)

For full details on Commission policy on accessibility for information providers, see: [http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](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>

### **3.1.Inception Report**

The inception report shall contain:

- A detailed work plan to be agreed with the Commission Services at the inception meeting;
- The review of the relevant literature;
- Motivated proposals for three pilot case studies reflecting key features of innovative markets and the competition problems that may arise in them. The inception report shall further develop the three proposals made in the tender. In particular, it shall present the pros and cons of each of the three proposals and consider the general lessons to be drawn from each case on the interaction between competition policy enforcement and innovation;
- A detailed description of the analytical framework, data and estimation methods to be used by the Contractor for the analysis of each of the three possible pilot case studies;
- A draft annotated outline of the final report.

The inception report shall not exceed 40 pages, annexes excluded. The selection of one or two pilot case studies must be agreed with the Commission Services at the meeting following delivery of the inception report.

### **3.2.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 approach chosen to achieve such objectives;
- The review of the relevant literature and the main lessons to be drawn from this review, allowing answering to study questions 1 to 4;
- Motivation of the pilot case studies selected;
- A first draft of the pilot case study reports;
- A description of problems encountered and solutions found;
- An assessment whether available data and other sources of information 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 70 pages, annexes excluded.

### 3.3.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 100 pages and contain a description of the subject matter and the context giving rise to the study questions listed above. A 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 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, econometric and 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 pilot 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.

### 3.4.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, both in English and French;
- 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 Commission.

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).

The document 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 is the case 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.

### 3.4.1. Publishable executive summary

The publishable executive summary shall be provided in both in English and French 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.

### 3.5. 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](mailto:comm-visual-identity@ec.europa.eu).

## 4. Timetable

The indicative starting date (T0) of the study contract is November. 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:

Deadline (from starting date)	Task
<i>Inception Report</i> T0 + 2 months	Contractor provides the Commission services with the <b>inception report</b> . A meeting with the Commission services is organised in Brussels at the latest two weeks after delivery of the report.
<i>Interim Report</i> T0 + 5 months	Desk and field research completed. Contractor provides the Commission services with the <b>interim report</b> . A meeting with the Commission services is organised in Brussels at the latest two weeks after delivery of the report.

<i>Draft Final Report</i> T0 + 7½ months	Contractor provides the Commission services with the <b>draft final report</b> . A meeting with the Commission services is organised in Brussels at the latest two weeks after delivery of the report.
<i>Final Report</i> T0 + 10 months	Taking account of the Commission services' comments the contractor sends the <b>final report and executive summary</b> to the Commission services.

## 5. Place of performance

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

## 6. Volume

The budget of the contract, including all costs, travel and incidental expenses, cannot exceed Euro 150,000 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.

## 7. 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).

## 8. Evaluation of tenders and award

### 8.1. 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.

## **8.2.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%.

## **8.3.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.

### **8.3.1. 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.

### **8.3.2. 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 fields of competition policy and R&D and innovation 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 and 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' of professional experience in competition policy.

Expert in R&D and innovation policy: Ph.D and five years' of professional experience in R&D and innovation policy.

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

#### 8.4.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.	<b>Proposed methodology and analytical tools</b>	<b>(40 points – minimum threshold 50%)</b>
2.	<b>Relevance of the case studies proposed</b>	<b>(20 points – minimum threshold 50%)</b>
3.	<b>Access to data required for the analysis</b>	<b>(20 points – minimum threshold 50%)</b>
4.	<b>Organisation of the work</b>	<b>(20 points – minimum threshold 50%)</b>
<b>Total number of points:</b>		<b>100</b>

The assessment of the "Proposed methodology and analytical tools" will consider whether the methodological approach for both the descriptive analysis and the pilot case studies are based on recognised descriptive, analytical 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 innovation.

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.

### **8.5. 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.

### **8.6. 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.

## **9. Information on tendering**

### **9.1.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 Procurement<sup>5</sup> 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.

### **9.2.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.

### **9.3.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.

### **9.4.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.

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<sup>5</sup> See [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

## **9.5.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 8.2)

Part C: Evidence for selection criteria (see section 8.3)

Part D: Technical offer (see section 8.5)

Part E: Financial offer (see section 8.6)

## **9.6.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](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](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.