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ERGEG – European Regulators Group
for Electricity and Gas

SENT BY EMAIL

Your reference	Your message from	Our reference	Person in charge, DW Vienna, 27.6.2006
		PLP	Mag. Ploner, 211
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Comments to the "Guidelines for Good Practice on Regulatory Accounts Unbundling"

Dear Sir or Madam,

Following your invitation to the consultation on "Guidelines for Good Practice on Regulatory Accounts Unbundling" we hereby allow us to state our position on the subject.

Generally, the principles referred to in the report as the "Guidelines for Good Practice" have already been pursued by the Austrian regulatory authorities (ECG/ECK) even before the introduction of the legal unbundling in the framework of the collective bargaining. Individual sections have even been construed more strictly by the Austrian regulatory authorities than the reports suggests.

For example, ECG/ECK did not only audit the greater transactions of the network operators, but the whole auditor's report of the networking company. Furthermore, ECG/ECK were given very detailed information on the participation structures and on the allocation of the overheads.

It can be noted that a considerable part of the Guidelines of Good Practice was already common practice in Austria even before the introduction o f the legal unbundling. For this reason, it is not necessary to introduce any additional unbundling rules. We can already now state an extent of new legal basics so great that it invalidates a substantial part of the free market's advantages.

In the following we are going to answer concrete questions posed:

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1. Are there any other general guidelines you would like to propose in order to improve cost separation between integrated network companies and other services provided within the group or even within the network company (e.g. for "multi-network" companies)?

In Austria, clear criteria have already been implemented for the allocation of the costs between the individual activities in those companies that – following a comprehensive auditing process – were recognised as appropriate by the regulatory authority. For this reason, there is no need to introduce further potential cost allocation criteria, particularly because of the additional administrative costs accruing from this and because of the intervention into the corporate freedom related with it (e.g. as regards process organisation, process design and process control, cost calculation).

In order to guarantee a long-term forecasting from the point of view of the network operators, it is rather the regulatory authorities that should be obliged to comply with the Guidelines of Good Practice:

Unique and understandable targets in the implementation model that can be audited on the basis of facts, similar requirements in the member states, consideration of structural differences in the member states etc.

2. G1: Are the above-mentioned transactions sufficient to cover economic relations between network and affiliated companies?

Answer to the Questions 2 and 3:

Currently, all service level agreements by and between the network and affiliated companies are being submitted to the regulatory authorities, which means the ERGEG' request as regards the disclosure of "substantial transactions" has already been implemented in Austria.

Irrespective of the fact, if an external or internal accounting is used, it must be stated that, in accordance with the currently valid terms and conditions, the regulatory authorities do already today have comprehensive rights to information and inspection towards the network operators.

According to the guideline, these rights would also be transferred to parent companies, grandparent companies – and its subsidiaries – and thus to the entire group, the network operator is part of, i.e. possibly even to competitive areas. This guideline would thus lead to a restriction of the economic and legal autonomy of a company and the regulatory authority would be able to inspect those company parts that have only lately been liberalised (distribution), which means that said liberalisation would again be invalidated and thus the free market would be completely supervised. For this reason and for the fact that the administrative consequences would be considerable, independent company parts of a group should not be subject to a controlling activity of external third parties.

A general publication of transactions cannot be accepted.

3. G2: Do you agree that these pieces of information should not be published but only made available to the regulators? Do you agree that the additional information included under G2 may constitute an economic incentive for unequal treatment of affiliated and nonaffiliated companies?

The Austrian regulators are already having access to these data (see G1).

4. G4: A clear definition of necessary network services is supposed to be the basis for cost allocation. Do you agree that in order do treat economies it is proposed to use the method of "standalone cost". Could you imagine different practical solutions to allocate economies? If yes, what are the specific advantages of those methods?

The requests as regards a “clear definition of the necessary services” and as regards the “consideration of the direct process costs (standalone costs)” given in point G4 of the ER-GEG Guidelines are already completely fulfilled due to the implementation of the legal unbundling in the companies. It must, however, be taken into account that the definition of the individual processes – in the sense of an efficient design of the operational and corporate management – must be part of the respective company’s freedom of choice. The process benchmarking by the regulatory authorities which is clearly aimed at cannot under any circumstances be accepted – due to the non-comparable character of the processes:

- different definitions or designs of the processes for each company (e.g. business management or servicing are defined differently in different companies);
- different structural framework conditions (fragmentation, sprawl, customer structure etc.) for the carrying out of processes.

A homogenisation of the processes by the regulatory authorities would thus be an inadmissible intervention into the corporate freedom both as regards organisational and cost-accounting subjects, since it is mainly in the field of the efficient designing of processes where companies can find competitive advantages.

5. G5: Working competition via public tendering should guarantee market based prices. Do you agree that these prices should be accepted as market based and do you have proposals on how to calculate cost in case of non-market based procurement (for instance in case of specific services which are only provided by the affiliated company)?

In order to determine the market conformity of shared or technical services, the second solution proposed in accordance with ERGEG guidelines (SLAs must contain clear definitions and rules for the cost allocation.) should always be used – due to the special and company-related requirements for the individual services. A general obligation to effect public tenderings in the framework of the shared and technical services can thus not be deemed as goal-oriented. From our point of view, tenderings can only be used in the field of zero-loss energy, but it must be noted that the Austrian regulatory authorities do not recognise the results of a corresponding tendering processes.

Point 3 (access of the regulator to all information) represents an inadmissible intervention into the economic and legal autonomy of companies and thus into the corporate freedom. By means of the comprehensive and extensive rules on the unbundling, it is sufficiently assured that the regulatory authorities receive the information required for fulfilling their tasks.

According to point 4 (Service contracts are subject to the approval of the regulatory authority.), the private autonomy, i.e. the possibility to independently and freely decide upon legal relationships with third parties, is massively influenced or – by means of a “preliminary control” – restricted. Due to this limitation, the **intervening instances may, in particular, intervene into the companies’ economic freedom of organisation, without assuming the responsibility for the consequences.**

6. Do you agree that ownership (financing) of assets should not have any impact on capital cost?

We can agree to this position, since it is not reasonable that the mere fact that there are different forms of legal unbundling as regards assets (ownership vs. leasing) brings about different capital costs for network operators.

We ask you to kindly take into account our statement.

Yours sincerely

AUSTRIAN ASSOCIATION OF ELECTRICITY COMPANIES

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