



## DRAFT ERGEG guidelines of good practice on Functionnal and Informational Unbundling

June 26, 2007

Dear colleagues,

We acknowledge receipt of the draft ERGEG Guidelines of Good Practice on Functional and Informational Unbundling ("GGP"). We appreciate the considerable efforts made to harmonize and implement through these proposals the unbundling measures currently in force and we are pleased to contribute our comments, as follows:

*"G02: The system operator must have enough financial and personnel resources to ensure real decision making power and his independence. He must also be free to choose his. The system operator that employs personnel of the vertically integrated company must before define the profile of the employees he needs and must not accept the personnel sent by the vertically integrated company that don't match with this profile."*

One advantage of an integrated transport subsidiary is precisely its relationship with a group able to provide financial support when necessary. Moreover, its association with a parent company having a recognised financial rating can have the positive effect, due to the size of the company, of permitting lower borrowing cost for project investments. This has a beneficial overall impact on cost.

*"G05: The management of the system operator must neither own shares of the competitive businesses nor shares of the vertically integrated company as this would undermine his independence."*

As long as the truly relevant measures within the GGP are implemented properly, there is no reason to forbid employees of the subsidiary from owning shares of the integrated company. Moreover, supplementing the remuneration of subsidiary employees, in part, with shares or stock options of the listed parent is a very common practice in Europe. To cease doing so would abruptly remove one of the essential elements of the benefits package of the integrated company's employees, a transformation of their status which would be very complex and difficult to put into effect in the context of French labour relations.

*"G06: Activities and rights of the mother company on the system operator have to be limited to secure her financial interest (supervisory function). Interference by the mother company outside this supervisory function in the network business and knowledge of the day-to-day network business is not allowed."*

*G15: The financial plan shall be proposed by the network company. Any refusal of that plan must only be based on a pre-defined risk adjusted return on capital in line with internal requirements and capital market conditions. For investment under Third Party Access (TPA) the return on capital is usually set by the regulatory authority."*

*G16: The supervisory board may approve the global amount of investments but must not be consulted on any individual investment, whatever its cost."*

TIGF is already on a yearly budget approval system. Concerning your proposal to go further, we believe that:

- The parent company must conserve its access to the full details of the overall annual budget and of the pluri-annual budgets of the main projects in order to be in a position to give its prior approval of the investments. The proposition contained in the draft GPP will lead, in practice, to an Independent System Operator. We must point out that this proposition has been criticised by all representatives of industry. A preliminary impact study is viewed as being clearly necessary before any implementation.
- Our principle (but not sole) criterion for investment approval is precisely the return on capital. Nevertheless, we need the right to debate the adequacy of such return with the regulator in view of the risks, the optimisation of the technical configuration and the costs of capital for each project.
- Sarbanes Oxley rules and norms (reinforced by similar national laws) require listed parent companies to have access to full detailed financial information in order to foresee and prevent business failures.

Additionally any proposed budget increase or foreseeable over-run must obtain additional approval before going forward.

Long term business plans are not addressed by the draft GGP. It is normal business practice in large companies to review, on annual basis, the long term development outlook of their activities. Financial activities, in particular, require adequate long term visibility.

With regard to the proposal in the closing section of the GGP to appoint a trustee to supervise the financial affairs of integrated subsidiaries, it is our policy not to externalise this essential function, especially since the subsidiary has adequate resources to perform it.

*“G08 d: The management of the system operator shall not be dismissed without prior justification. The justification is based on network issues and shall be notified to the regulator.”*

What is to be understood by “management”? We agree that the General Manager is directly concerned, but we do not consider the supervisory board to be “management”.

*“G08 f: For the implementation of point 3e, the employment contract shall foresee that if the employee had access to commercially sensitive information a period of work without access to such information shall be imposed. If necessary, some functions in the vertically integrated company can be temporarily forbidden depending on the task he will have to deal with. “*

Prohibiting any assignment of an ex-employee of the integrated subsidiary to a position where he or she could theoretically abuse confidential information would be an unnecessarily harsh rule. We do understand, however, the usefulness of a cooling off period without any access to fresh confidential information prior to assuming a new assignment in which confidential information of the relevant category, if too current, could be abused.

*“G12: Personnel leasing from an affiliated company should be strictly limited to pure maintenance work. The network company has to fully “manage” the work force which operates the grid. This shall include training, rewards, layoffs etc. »*

This restriction appears to us to be particularly excessive. Personnel leasing is efficient not only for maintenance operations but also for construction and development and even for office assistance, legal work and accounting. In fact, there should not exist any barriers which would reduce the flexibility available to the integrated company to access experienced industry staff from time to time in accordance with its changing needs.

The above elements of the draft GGP seem to us overly restrictive. Further unbundling regulation should not be rushed. Partial implementation of essential measures would enable a preliminary assessment to be made of its effects. Subsequently, ERGEG could consider whether or not unbundling needs to be reinforced in a third package.

We maintain our support for an open, transparent, competitive market but we still believe that any form of ISO, which is apparently what you suggest, is not the best way to proceed. The second directive should be implemented correctly in all jurisdictions before going further if necessary.

**Véronique CHARLOT**  
Chargée d’Affaires Réglementaires  
GAS & POWER