

TENDER SPECIFICATIONS

**STUDY ON THE FUTURE OF
INTERCONNECTION CHARGING METHODS**

SMART 2009/0014

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Terms of reference – Study on the future of interconnection charging methods

Part 1. TECHNICAL DESCRIPTION

1.1. Context

The widespread availability of affordable and secure fixed and mobile broadband communications networks across the European Union (EU) for the delivery of seamless voice, data and content services and applications is a key condition for realising the growth and job-creation potential of the EU, an objective which lies at the heart of the Lisbon strategy. Electronic communications are the "enabling technologies" underpinning innovation and creativity in their own and other sectors and are responsible for a large share of the growth in productivity in the European economies. In the current economic downturn, the role of electronic communications is even more significant as their wider diffusion and use can mitigate the impact of the worsening economic conditions.

The EU regulatory framework for electronic communications is the main instrument to achieve this overarching objective. As part of this comprehensive set of rules, regulatory provisions on network interconnection play a pivotal role by, on the one hand, setting out the rights and conditions for the establishment of a physical and logical linking between public telecoms networks with a view to ensuring interoperability of services throughout the EU, and on the other hand by enabling the development of competition in a sector formerly controlled by public monopolies.

The regulatory provisions on interconnection, initially in the form of 'Open Network Provisions' (ONP) under the 1998 EC regulatory framework, are now contained in Directive 2002/19/EC (Access Directive) of the EU regulatory framework, and apply to all public network infrastructures, with no distinction in terms of platforms, network architectures and underlying technologies.

However, under the impact of technological change and market development, notably through the convergence of networks using the Internet Protocol (IP), also called next generation networks (NGN), the interconnection regimes and associated regulatory obligations - which have mostly been applied to traditional circuit-switched networks, are increasingly being challenged.

The Commission published in February 2008 a study which analyses both traditional interconnection models (e.g. PSTN, mobile) and IP interconnection models (e.g. Internet, mobile), that are used in Europe and other part of the world, and provides a forward-looking analysis of IP interconnection regimes in the light of developments in both the traditional telecommunications and Internet environment¹.

Another key feature of interconnection regimes in Europe is the presence of a bottleneck on the network termination, by which a receiving operator completely controls the delivery of traffic that is destined for his receiving subscribers. Where termination rates are set above efficient costs, as this has been mostly the case in Europe, this has given rise to significant transfers between fixed and mobile markets and consumers. In addition, there are in Europe significant divergences in national regulatory treatments of fixed and mobile termination rates. Taken together, these elements have resulted in the creation of fundamental competitive distortions which harm consumers and hinder investment and innovation.

¹ The Future of IP Interconnection: Technical, Economic and Public Policy Aspects , WIK Consult, February 2008, available at: http://ec.europa.eu/information_society/policy/ecommlibrary/ext_studies/index_en.htm#2008

To address this situation, the Commission adopted on 7 May 2009 a Recommendation² whose objectives are to ensure harmonisation of the regulatory treatment of termination charges across Europe and to eliminate excessive pricing, by setting out clear guidance for EU telecoms regulators on the cost-based method to be used. The proposed approach should lead to substantial reductions in termination rates.

The above-mentioned technological changes and market developments combined with a significant reduction of termination charges might create incentives for operators to enter into new inter-operator agreements, in particular 'Bill and Keep' (BAK) by which traffic is exchanged without financial settlements taking place.

This issue was raised in Council working group during the discussions which took place in the context of the reform of the EU regulatory framework for electronic communications networks and services during 2008 and the first half of 2009. While the group concluded that it was premature to amend the relevant regulatory provisions at this point in time, the debate was a clear a signal for further work to be carried out in this area.

1.2. Objectives of the study

1.2.1. Overall objectives

This study is to analyse the likely evolution as well as the impact of an introduction of BAK on the migration process towards IP network interconnection, assuming a lowering of network termination fees in the medium term, and to identify any necessary regulatory requirements at national and European levels so as to avoid regulatory fragmentation and to ensure the appropriate level of co-ordination in regulatory intervention across the EU.

To achieve this objective, the study will have to analyse the likelihood of a wide-spread use of BAK as well as its merits and drawbacks as compared to other charging mechanisms, its impact on convergence trend, on competition in the market, on investment and innovation in the telecoms sector and any spill-over effects on adjacent sectors, on consumer benefits, the overall contribution of a transition to BAK on the growth and competitiveness of the EU economy, and lastly the magnitude of required regulatory oversight at national and European levels.

1.2.2. Specific requirements

In order to reach the above overall objectives, the contractor shall, in particular, meet the following specific requirements:

- a) as a starting point, the contractor should identify the main interconnection charging methods and associated financial settlement mechanisms which have been implemented in the electronic communications sector so far, in Europe and in other world-wide regions, and analyse each of them against a number of relevant parameters, such as, for instance, network environment (e.g. IP v circuit-switched networks, fixed v mobile), situation in the value chain (e.g. transit v termination) and associated regulatory obligations, so as to provide a clear and comprehensive empirical background for carrying out this study;
- b) when assessing the likelihood of a transition towards BAK, the contractor will take into account technological change and market developments, and in particular the shift to VoIP and other IP-based services, the development of flat rates and of bundle offers in

² Recommendation of 7 May 2009 on "The regulatory treatment of fixed and mobile termination rates in the EU", C(2009) 3359: http://ec.europa.eu/information_society/policy/ecomms/library/recomm_guidelines/index_en.htm

the provision of services, as well as the impact of operators' on-net / off-net strategies on the exchange of traffic;

- c) with regard to the merits of BAK, the study will have to provide analysis, both theoretically and empirically, of conditions under which BAK would be the most economically efficient charging mechanism, taking into account recent economic literature in the field. In particular, the study will have to analyse the properties exhibited by BAK in the presence of 'uninternalised' call externalities' (i.e. the benefits to the recipient of a call not being taking into account), and of the fact that BAK would not require the benefits to be distributed equally between the caller and the receiver in order to perform, under certain conditions, better than other wholesale regimes;
- d) when analysing the drawbacks of BAK, the study will also have to assess the economic inefficiency of BAK in terms of price signals related to the fact that this mechanism departs from cost reflective prices. This aspect is important in particular in circumstances where BAK would apply for fixed and mobile network interconnection, given that the respective costs structures are not necessarily identical. To this end it would be also useful to examine the impact of technological developments which are increasingly enabling fixed and mobile networks to share the same access, backhaul and core network elements, which might result in a reduction of cost differentials and give rise to lower risk of distorted price signals in case of BAK;
- e) when assessing the impact of BAK on investment, the study will also have to analyse the consequences of a BAK regime on investment incentives, given that in the absence of termination payments the originating operator may have an incentive to hand over the call to the terminating network as early as possible in its network architecture;
- f) when analysing the impact of BAK on consumer benefits, the study will also have to assess to what extent BAK could induce operators to move to a system of Receiving Party Pays (RPP) -whereby the recipient of the call is charged - and also to what extent this change of regime could lead to increases in the price of other services or subscription fees resulting in consumer detriments, in particular for low-income customers. The study should also examine the particular consequences for existing retail pricing structures and potential implications for consumers;
- g) when analysing the impact on competition, the study will also have to assess to what extent the transition to BAK may be conducive to potential anti-competitive behaviours, in the forms of abuses of a dominant position or collusion which may harm consumers and hamper investment and innovation;
- h) with regard to the role of and impact on regulation, the study will have to assess the magnitude of the potential regulatory burden associated with overseeing any (voluntary or mandated) move to a BAK system. For example, this could include assessing the management of transitional issues both on a national and cross-border basis and identifying any regulatory measures needed to facilitate a co-ordinated migration to BAK, e.g. obligations for reciprocal pricing in commercial negotiations, as well as addressing possible sub-optimal routing and hand-over issues as mentioned above and dealing with traffic which arises from outside the BAK domain.

Moreover, in the course of assessing the need for Community measures in this area, the contractor should consult relevant stakeholders. The overall style of the deliverables prepared within this study ought to be focussed on being clear and understandable to the lay, though informed, reader.

1.3. Duration

Duration of the tasks must not exceed 7 months and is subject to the provisions of Art. I.2.3 of the contract.

1.4. Deliverables, meetings and timetable

1.4.1. Deliverables

- **Preparatory documents for the inception meeting**, including a draft meeting agenda, study objectives, methodology, resources and timetable and a draft (but detailed) **outline of the study report**, to be delivered to the Commission's services three working days before the inception meeting.
- **Inception report**, that will contain the minutes of discussions and agreements reached in the inception meeting. It will be accompanied by the updated preparatory documents mentioned above in accordance with the indications provided by the Commission during the inception meeting. The inception report shall be made available to the Commission's services one week after the inception meeting.
- **Draft Interim study report** which will cover the requirements from points (a) to (g) described in section 2.2 in order to support the discussions at the interim meeting. The interim study report shall be made available to the Commission's services one week before the interim meeting and within 12 weeks after signature of the contract by the last contracting party.
- **Interim meeting report**, that will contain the minutes of discussions and agreements reached in the interim meeting. It shall be made available to the Commission's services one week after the interim meeting.
- **Interim study report**, updated in accordance with the indications provided by the Commission during the Interim meeting shall be made available to the Commission's services one week after the interim meeting.
- **Draft Final study report**, including the following sections:
 1. Separate executive summary of around 10 pages containing a description of the most important findings, in easy-to-understand terms
 2. Introduction
 3. General scientific and methodological approaches followed
 4. Chapter-by-chapter analysis
 5. Conclusions
 6. Annexes containing any factual or technical material or any detailed analysis

The draft final study report shall be made available to the Commission's services one week before the final meeting and within 21 weeks after signature of the contract by the last contracting party.

- **Final meeting report**, that will contain the minutes of discussions and agreements reached in the final meeting. It shall be made available to the Commission's services one week after the final meeting.
- **Final study report**
The final study report, that will take into account the outcome of the Final meeting, shall be made available to the Commission's services within 26 weeks after signature of the contract by the last contracting party. The final study report shall be provided in 3 bound paper copies including annexes and in "Word" and "PDF" format suitable for publication by the Commission's services on the Commission website.

1.4.2. Meetings

Inception meeting

An inception meeting will be organised by the Commission's services at the Commission's premises in Brussels *within 1 week* after signature of the contract by the last contracting party.

Interim meeting

An interim meeting during which the contractor will present the interim findings will be held *within 13 weeks* after signature of the contract by the last contracting party. It will be organised by the Commission's services at the Commission's premises in Brussels.

Final meeting

A final meeting during which the contractor will present the draft final study report will be held *within 22 weeks* after signature of the contract by the last contracting party. It will be organised by the Commission's services at the Commission's premises in Brussels. The contractor will have to modify the draft final study report to produce the final study report on the basis of the outcome of the final meeting.

1.4.3. Timetable

Deliverable ↓	Meeting ↓	Week →	1	2	12	13	14	21	22	23	26
Preparatory doc for the inception meeting											
	Inception meeting										
Inception report											
Draft interim study report											
	Interim meeting										
Interim meeting report											
Interim study report											
Draft final study report											
	Final meeting										
Final meeting report											
Final study Report											

1.5. Terms of Approval of reports

After reception of the interim study report, the draft final study report and the final study report included in section 4.1 above, the Commission will have 30 calendar days in which:

- to approve it, with or without comments or reservations;
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to be approved.

Where the Commission requests a new report because the one previously submitted has been rejected, this must be submitted within 15 calendar days. The new report shall likewise be subject to the above provisions.

Part 2. ADMINISTRATIVE DETAILS

2.1. Eligibility requirements

All the **requirements** related to the **submission and opening of the tenders** are detailed in the invitation to tender (see sections 2, 4 and 8 of the invitation to tender):

- *Address and deadline for submission of the tender*
- *Presentation of the offer and Packaging*
- *Opening of the Tenders*

2.2. Administrative requirements

A service provider may consider submitting a tender as a single entity or decide to collaborate with other service providers to present a bid: either by submitting a **joint tender** or through **subcontracting**. Tenders may also combine both approaches.

2.3. Different ways to submit a tender

Please pay attention to options 1 to 4 below, which describe the different ways of submitting a tender, and make sure that all the documents and evidences required with respect to YOUR tender are submitted.

Option 1: Submission by **one tenderer: Private / Public entity / Individual.**

Option 2: Submission by **partners** as defined under section 2.2 below.
One must be designated as **lead partner/contractor**.

Option 3: Submission by **one tenderer with subcontractors** as defined under section 2.2 below

Option 4: Submission by **partners** (one must be designated as lead partner/contractor) **with subcontractors** as defined under section 2.2 below

2.3.1. Joint Tenders and Subcontracting

2.3.1.1. Joint tenders

In case of a joint tender submitted by a group of tenderers, these latter will be regarded as **partners**. If awarded the contract, they will have an equal standing towards the contracting authority in the execution of the contract.

The partnership may take the form of:

- a) a **new legal entity** which will sign the contract with the Commission in case of award, or
- b) a group of partners not constituting a new legal entity, who via a **power of attorney (Annex 5)**, signed by an authorised representative of each partner, designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

In both cases, all partners shall be considered as tenderers and shall **assume joint and several liability towards the European Commission for the performance of the contract.**

2.3.1.2. Subcontracting

Subcontracting is a situation where a contract is to be established between the Commission and a service provider and where this service provider, in order to carry out the contract, enters into legal commitments with other legal entities for performing part of the tasks foreseen in the contract.

The tenderer submitting the tender, if awarded the contract, shall become the sole contractor and shall assume **full liability toward the European Commission for the performance of the contract as a whole**. The other service providers will be regarded as subcontractors.

Subcontracting is subject to the provisions of Article II.13 of the model contract annexed to the invitation.

2.4. Identification of the tenderer – List of Forms & Evidences Required

Options 1/2/3/4: Documents to be provided by the single tenderer or lead partner:

- Annex 1: Administrative identification form (filled in and signed by an authorised representative)
- Annex 2: Legal Entities form³ (filled in, signed by an authorised representative, and supported by relevant evidences according to the entity concerned, i.e. private/public/individual)
- Annex 3: Financial Identification form⁴ (filled in and signed by an authorised representative of the tenderer and his banker)
- Annex 4: Exclusion criteria form (filled in and signed by an authorised representative)
- Legible copy of the statutes of the company (for public/private entities)
- Legible copy of an official document indicating the name of the authorised representatives empowered to sign contracts on behalf of the tenderer.

Options 2 and 4: documents to be provided by each partner

- Annex 1: Administrative identification form (filled in and signed by an authorised representative)
- Annex 2: Legal Entities form⁵ (filled in, signed by an authorised representative, and supported by relevant evidences according to the entity concerned, i.e. private/public/individual)
- Annex 4: Exclusion criteria form (filled in and signed by an authorised representative)
- Annex 5: Power of attorney (filled in and signed by an authorised representative of each partner)
- Legible copy of the statutes of the company (for public/private entities)
- Legible copy of an official document indicating the name of the authorised representatives empowered to sign contracts on behalf of the tenderer.

Options 3 and 4: Documents to be provided by each subcontractor

- Annex 1: Administrative identification form (filled in and signed by an authorised representative)

³ A standard template in each EU language is available at: http://ec.europa.eu/budget/execution/legal_entities_en.htm

⁴ A standard template in each EU language is available at: http://ec.europa.eu/budget/execution/ftiers_en.htm

⁵ A standard template in each EU language is available at: http://ec.europa.eu/budget/execution/legal_entities_en.htm

- Annex 4: Exclusion criteria form (filled in and signed by an authorised representative)
- Annex 6a: Letter of intent from each subcontractor (signed by an authorised representative) to confirm their willingness and availability to perform the tasks.

Individual external experts, not part of the tenderer's staff, foreseen to execute a part of the work are also to be considered subcontractors. Individual external experts will have to provide only the letter of intent in Annex 6b.

2.5. Signature of the tender

The signature of the tenderer's authorised representative or representatives (preferably in blue ink) on the administrative identification form (**Annex 1**) will be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender.

2.6. Layout of the tender

All tenders must be clear, complete and consistent with all the requirements laid down in the tendering documents and **presented in 3 sections** as follows:

2.7. Administrative section

The documentary evidence required in accordance with part 2 section 2, section 3, section 5.1.3 and section 5.2 of the Tender Specifications must be included in the administrative section of the tender. **Tenders not including the necessary evidence may be rejected.**

2.8. Technical section

This section must address all the requirements laid down in Part 1 - Technical description of the tender specifications. Information included here will be used to conduct the qualitative assessment of the tenders on the basis of the technical award criteria listed in section 5.3 below.

2.9. Financial section

The price quoted must fulfil the following requirements:

- A **total** fixed price expressed **in Euro** must be included in the tender.
- The price quoted must **be firm and not subject to revision**.
- The prices must be quoted **free of all duties, taxes and other charges**, i.e. also free of VAT, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.
- The price quoted shall be subject to the terms set in Article I.3 of the model contract attached.
- The price must fall within the scope of these tender specifications and be broken down into unit prices and quantities per each of the following categories:

(a) Professional fees. The daily fee and total number of man/days for each category of staff working on the contract must be specified. The tender must also present a breakdown of professional fees for each section in Part 1 section 4.

(b) Travel and subsistence expenses. In the event of travel being necessary to carry out the duties specified in the tender, travel and subsistence expenses shall be paid as indicated in the tender

The part that the tenderer intends to subcontract shall be precisely indicated and detailed.

A total effort of approximately 160 man/days is required.

2.10. Evaluation of tenders

The evaluation of tenders will be done in accordance with the following subsequent steps:

- The Commission verifies that the **tenderer** is not in one of the situations covered by the exclusion criteria (first step, see section 5.1 below)
- The Commission verifies that the **tenderer** has the appropriate capacities to perform the contract on the basis of the selection criteria (second step, see section 5.2 below)
- The Commission assesses the **tender** on the basis of the award criteria (third step, see section 5.3 below).

2.11. Exclusion Criteria

Pursuant to Article 45(2) of Council Directive 2004/18/EC and to Article 93(1) of the Financial Regulation, the Commission will exclude tenderers from participation in the procurement procedure if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation.

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

For the purpose of the correct application of the above paragraph, the candidate or tenderer, whenever requested by the contracting authority, must:

- (a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity,
- (b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1 of Article 93 of the Financial Regulation.

Pursuant to Article 45(2) of Council Directive 2004/18/EC and Article 94 of the Financial Regulation, a contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;
- (c) find themselves in one of the situations of exclusion, referred to in Article 93(1) of the Financial Regulation, for this procurement procedure.

Tenderers – including sub-contractors if any - shall provide a declaration on their honour (Annex 4), duly signed and dated, stating that they are not in one of the situations referred to in Article 93(1) or 94 of the Financial Regulation. The tenderers must undertake to inform the Commission, without delay, of any changes with regard to these situations after the date of submission of the tender.

In addition, for contracts of a value higher than EUR 133.000, ONLY the tenderer to whom the contract is to be awarded shall confirm the declaration by providing, within a time-limit defined by the contracting authority and preceding the signature of the contract, the following evidences (if the tender is proposed by partners, these evidences must be submitted by each partner):

- 1) The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document, **issued less than 12 months before the date of the letter informing of the contract award** by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a certificate by the competent authority of the State concerned, **issued less than 12 months before the date of the letter informing of the contract award**.
- 2) Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93(1) of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1) and 2) shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

In case of doubt on the declaration on the honour provided by the subcontractor(s) in accordance with the indications of point 5.1.3 above, the contracting authority shall request the evidence referred to in points 1) and 2) above from the subcontractor(s).

2.12. Administrative and financial penalties

1. **By returning the form in Annex 4 duly signed and dated**, tenderers confirm that they have been notified of the following points: Each institution has a central database containing information on tenderers who have been in one of the situations described under 5.1.1 and 5.1.2 above. The sole purpose of this database is to ensure, in compliance with Community rules on the processing of personal data, that the above-mentioned cases of exclusion are applied correctly. Each institution has access to the databases of the other institutions.

Tenderers and, if they are legal entities, persons who have power of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p.12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with power of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

2. In accordance with Article 96 of the Financial Regulation the contracting authority may impose administrative or financial penalties on the following:
 - (a) candidates or tenderers in the cases referred to in point (b) of Article 94 of the Financial Regulation;
 - (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

3. The penalties referred to in paragraph 2 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:
 - (a) exclusion of the candidate or tenderer or contractor from the contracts and grants financed by the Community budget for a maximum period of ten years; and/or
 - (b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.
4. In accordance with Article 133 of the Regulation laying down the rules for the implementation of the Financial Regulation, the cases referred to in point e) of 5.1.1. above shall be the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by Council Act of 26 July 1995 (OJ C 316, 27.11.1995, p. 48);
 - (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 (OJ C 195, 25.6.1997, p. 1);
 - (c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ L 351, 29.12.1998, p. 1);
 - (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ L 166 of 28 June 1991, p. 77).
5. Pursuant to article 133a of the Regulation laying down the rules for the implementation of the Financial Regulation, in order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.
- When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.
- Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.
6. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:
- (a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;
 - (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.
- That period of exclusion may be extended to ten years in the event of a repeated offence within five years of the date referred to in points (a) and (b), subject to paragraph 5.
7. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.
8. Pursuant to article 134b of the Regulation laying down the rules for the implementation of the Financial Regulation, without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established as confirmed following an adversarial procedure with the contractor.

That period may be extended to ten years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

9. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2% to 10% of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2% to 10% of the total value of the contract in question.

That rate may be increased to 4% to 20% in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 8.

The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 133a(1) of the Regulation laying down the rules for the implementation of the Financial Regulation.

2.13. Selection criteria

The following selection criteria will be used to select the tenderers.

If the tender is submitted by partners (as defined under section 2.2 above)

- the selection criteria in respect of financial and economic capacity (see point 5.2.2 below) are to be considered as setting minimum standards which must be fulfilled by each partner;
- the selection criteria in respect of technical capacity (see 5.2.3 below) will be assessed in relation to the combined capacities of all the members of a partnership as a whole (including subcontractors)

2.13.1. Professional information

Criterion:	Enrolment in one of the professional or trade registers in the country of establishment
Documentary evidence:	Declaration or certificate of enrolment in one of the professional or trade registers in the country of establishment

2.13.2. Financial and economic capacity

Criterion:	Sufficient financial and economic standing
Documentary evidence:	Annual income statements and balance sheets or extracts there from for the last two financial years Statement of overall turnover and turnover from contracts in the field of consultancy in electronic communications in the last three financial years.

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.

2.13.3. Technical background

Criterion:	Relevant expertise of the tenderer(s), including subcontractors if any, acquired in the last three years, in the field of economics applied to sector-specific regulation of and/or competition law in the area of electronic communications
Documentary evidence:	List of contracts in the field of electronic communications involving economic analysis, performed in the past three years, or currently being performed, with their respective values

Criterion:	Experience, technical knowledge and credibility of proposed team
Documentary evidence:	Concise but informative curricula vitae of team members, demonstrating professional experience in the field of this study, in particular economics applied to regulation of and/or competition law in the area of electronics communications of at least 5 years, including list of scientific publications

Criterion:	Management capability
Documentary evidence:	List of contracts of a value of at least 100.000 euros performed in the last five years by the tenderer(s), including subcontractors if any

2.14. Award criteria

2.14.1. Technical award criteria

The tenders will be qualitatively assessed on the basis of the technical award criteria and respective scores listed below:

<u>Technical award criterion</u>	<u>Maximum score/weighting</u>	<u>Threshold</u>
1. Understanding of the tasks required The tenderer shall explain the way in which he intends to handle the various requirements, in relation with EU policy objectives in the field.	35	17,5
2. Technical quality of the tender <ul style="list-style-type: none"> • Completeness and full coverage of the scope of the tasks • Quality of the methodological approach • Degree of innovation and of added value • Value added at the EU level (All the sub-criteria above are of equal relative importance) 	50	25
3. Management Sound and realistic allocation of financial and human resources, including allocation of expertise	15	7,5
TOTAL	100	

Minimum score per criterion (threshold):

Tenders scoring less than 50% of the maximum score for any technical award criterion will be considered of insufficient quality and rejected.

Minimum total score (threshold):

Tenders with a **total score** of less than 60 points at the end of the evaluation process will be considered of insufficient quality and rejected.

2.14.2. Price

The price quoted must comply with the requirements laid down in Part 2 - section 4.3 above.

2.14.2.1. Award of the contract

The Contract shall be awarded to the tender offering the best value for money, which will be the one with the best quality/price ratio, taking into account the award criteria listed in section 5.3. The qualitative score obtained for the technical award criteria will be divided by the total price of the tender.

2.14.2.2. Payment and standard contract

- Payments under the contract shall be made in accordance with articles I.4 and II.4 of the model contract attached.
- Depending on the financial solidity of the tenderer, payment of the pre-financing may be made conditional upon the furnishing by the Contractor of a financial guarantee.
- In any case, a financial guarantee shall be required for the payment of pre-financing exceeding EUR 150.000. The guarantee shall be supplied by a bank or an authorised financial institution. The guarantee shall be denominated in Euro. The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.

2.14.2.3. Validity of the tender

Period of validity of the tender shall be nine months from the closing date for submission of the tender given above.

2.14.2.4. Additional provisions

- Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- All documents submitted by tenderers will become property of the Commission and will be regarded as confidential.

2.15. Liquidated damages

See article II.16 of the model contract.

2.16. No obligation to award the contract

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. Should the invitation to tender cover several items or lots, the Commission reserves the right to award a contract for only some of them. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

2.17. Results

The results of the service must be forwarded to the Commission of the European Communities in Brussels. **The copyright will belong to the Commission;** the Commission will in particular have the right to publish the results.

2.18. Disclaimer

The following sentence is to be prominently displayed on the cover of each deliverable. The disclaimer should also be incorporated into the introduction of each deliverable.

<p>The opinions expressed in this study are those of the authors and do not necessarily reflect the views of the European Commission.</p>
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Part 3. ANNEXES

ANNEX 1: ADMINISTRATIVE IDENTIFICATION FORM

<u>TENDERER'S ID</u>	
Name	
Legal form	
Date of registration	
Country of registration	
Registration number	
VAT number	
Address of registered office	
Contact address (if different)	
URL	
<u>AUTHORISED REPRESENTATIVE(S)⁶</u>	
<u>CONTACT PERSON</u>	
Name	
Forename	
Position	
Telephone	
Fax	
Email	
<u>DECLARATION BY THE AUTHORISED REPRESENTATIVE(S):</u> I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	

Place and date:

Name (in capital letters) and signature:

⁶ Please include the names of the legal representative(s) whose contract signature is required in accordance with the statutes of the organisation and the official document to be provided under section 2.3

Annex 2: Legal entities form

As required in PART II under section 2.3 of the tender specifications.

A standard template in each EU language is available at:

http://ec.europa.eu/budget/execution/legal_entities_en.htm

ANNEX 3: BANK IDENTIFICATION FORM

As required in PART II under section 2.3 of the tender specifications

A standard template in each EU language is available at:

http://ec.europa.eu/budget/execution/ftiers_en.htm

**ANNEX 4: DECLARATION OF HONOUR WITH RESPECT TO THE EXCLUSION
CRITERIA AND ABSENCE OF CONFLICT OF INTEREST**

The undersigned [name of the signatory of this form, to be completed]:

- in his/her own name (if the economic operator is a natural person)

or

- representing (if the economic operator is a legal person and the declaration is signed by a director or person with powers of representation)

official name in full:

official legal form:

official address in full:

VAT registration number:

declares that he/she / the company or organisation that he/she represents:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;

- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above⁷.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.]

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

⁷ Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.

ANNEX 5: POWER OF ATTORNEY**MANDATING ONE OF THE PARTNERS IN A JOINT TENDER AS LEAD PARTNER
AND LEAD CONTRACTOR****(to be filled in and signed by each of the partners in a joint tender)**

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by Company 1, Company 2, Company N, and led by Company X, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by Company 1, Company 2, Company N, and led by Company X on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
 - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
 - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: [Provide details on bank, address, account number].
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
 - (a) The lead partner shall submit the tender on behalf of the group of partners.
 - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
 - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in on [dd/mm/yyyy]

Place and date:

Name (in capital letters), function, company and signature:

ANNEX 6a: LETTER OF INTENT FOR SUB-CONTRACTORS

**STUDY ON THE FUTURE OF INTERCONNECTION CHARGING
METHODS**

SMART 2009/0014

The undersigned:

Name of the company/organisation:

Address:

Declares hereby that, in case the contract is awarded to [name of the tenderer], the company/organisation that he/she represents, intends to collaborate in the execution of the tasks subject to this call for tender, in accordance with the tender specifications and the tender to which the present form is annexed, and is available to carry out its part of the tasks during the period foreseen for the execution of the contract.

Place and date:

Name (in capital letters) and signature:

ANNEX 6b: LETTER OF INTENT FOR EXTERNAL EXPERTS

**STUDY ON THE FUTURE OF
INTERCONNECTION CHARGING METHODS
SMART 2009/0014**

The undersigned:

Name of the company/organisation:

Address:

Declares hereby that, in case the contract is awarded to **[name of the tenderer]**, he/she intends to collaborate in an individual capacity as **an external expert** in the execution of the tasks subject to this call for tender, in accordance with the tender specifications and the tender to which the present form is annexed, and is available to carry out its part of the tasks during the period foreseen for the execution of the contract. In addition, the undersigned declares not to have any conflict of interest in connection with the contract, and not to be in one of the situations of exclusion referred to in Article 93(1) of the Financial Regulation.

Place and date:

Name (in capital letters) and signature: