



EUROPEAN COMMISSION

Information Society and Media Directorate-General

Electronic Communications Policy

Brussels, sending date
B/OS D(2010)

**Study on steps towards a truly internal market
for e-communications networks and services
in the run-up to 2020
SMART n° 2010/0016**

**CONTRACT NOTICE published in
OJ 2010/S 162-249129 of 21-08-2010¹**

Questions and Answers

QUESTION:

One specific requirement in section 2.2 is asking the successful contractor to:

"establish indicators for regulatory divergence between the EU Member States and quantify the possible losses caused by the inconsistent implementation of regulation across the EU. The contractor will have to assess the impact of regulatory heterogeneity on two factors, namely, the level of competition and investment, and propose possible regulatory tools that would enhance these two factors across the internal market."

This could be interpreted as assuming that there is a proven inconsistent implementation of regulation across the EU which has caused harm on investment and competition. If this is the case, it would be helpful to understand from the Commission whether this assumption is correct, and if so, what is exactly covered by the term 'inconsistent implementation of regulation across the EU', and any existing list and assessment (by the Commission or others) of the regulatory areas where regulation has been implemented inconsistently, the nature and degree of inconsistencies identified, and the geographies affected - and the key Commission concerns. We may however be mis-reading the

¹ <http://ted.europa.eu/udl?uri=TED:NOTICE:249129-2010:TEXT:EN:HTML>

situation, and it is conceivable that the Commission does not consider that inconsistent implementation has caused significant losses (as the ITT uses the term 'possible', and talks about establishment of 'indicators of regulatory divergence'), and that therefore there is a requirement to first define inconsistent implementation of regulation, identify the areas/geographies where this has happened, and then evaluate whether there has been any material harm caused, before quantifying it.

To illustrate with an example, consider the area of the approach used by NRAs to set 'cost oriented' wholesale charges for access by 3rd parties to an incumbent's 'last mile' network for the purpose of offering retail broadband services. As you will be aware, there is a wide range of cost approaches used, resulting in a significant variation in these prices (as documented by the EC implementation reports). Would the Commission in this study:

(i) consider that this divergence is likely to have caused some significant harm, and request that the contractor evaluates quantitatively what the harm has been, and what would be required to remove such variations in approach OR

(ii) request that the contractor evaluates whether the divergence of approaches has caused any harm, and seek to understand the link between the divergence in costing approaches and any negative impact on investment and competition, before undertaking step (i).

As we hope this examples illustrates, this different interpretation could have different implications about what the study analysis should do, and how. And as the term 'inconsistent implementation of regulation' could in principle cover a very wide range of measures, such a task would be extremely different in nature if interpreted as (ii), compared to interpretation (i).

ANSWER:

The issue of regulatory inconsistency that you are raising is addressed in explicit terms in one of the most recent policy papers mentioned in the tender specification - which happens to be also the main justification of this study - as well as in many other policy papers from the Commission on the sector (e.g. implementation reports). We would be very interested to learn from your company - would you decide to submit an offer - how you handle it, in the light of the specific requirement mentioned in your e-mail. We are sorry not to be able to be more explicit because we do not want to be biased towards analysis and proposals which might be presented by tenderers.