

**Union of the Electricity Industry – EURELECTRIC
recommendations on unbundling**

June 2005

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These comments were drafted by the TF Ownership Unbundling and approved by the EURELECTRIC Markets Committee.

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The **Union of the Electricity Industry - EURELECTRIC**, formed as a result of a merger in December 1999 of the twin Electricity Industry Associations, UNIPED and EURELECTRIC, is the sector association representing the common interests of the European Electricity Industry and its worldwide affiliates and associates. Its mission is to contribute to the development and competitiveness of the Electricity Industry and to promote the role of electricity in the advancement of society.

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Unbundling aims to prevent conflicts of interest between, on one side, the competitive activities of generation and supply and, on the other side, the regulated business of network operation. In this sense, unbundling is a key tool for a well-functioning European electricity market.

EURELECTRIC believes that Directive 2003/54/EC has found the correct balance on unbundling and fully trusts that, when properly implemented, it will deliver all objectives assigned to it. It is therefore the objective of these recommendations to help ensure a correct application of the unbundling provisions.

In terms of functional unbundling, the Directive requests companies in particular to ensure the separation and independence of the network management from generation and supply, and to adopt a compliance programme that sets out the measures and control procedures to ensure that discrimination is excluded. Another key feature of the unbundling regime under Directive 2003/54/EC relates to the control of its application by regulators, who must control the effective unbundling of accounts and ensure the absence of discriminatory conduct by network operators. Regulators also have the authority to act as a dispute settlement body and to require modifications in the network access terms and conditions of the concerned network operator. The Directive thus contains a coherent set of rules both in terms of company structure and regulatory supervision.

It is now necessary that Member States proceed swiftly and precisely with the transposition of the liberalisation package. The situation where a majority of Member States have not implemented it more than half a year following entry into force is creating uncertainty and sending negative signals to the markets and stakeholders. Therefore, EURELECTRIC calls on Member States to rapidly complete their transposition work and make all efforts to ensure that the unbundling provisions of Directive 2003/54/EC are given a legal basis in all EU Member States.

COMMITMENT

EURELECTRIC is firmly committed to contributing to the elimination of cross-subsidies and discriminatory access to networks. To this end, it supports the unbundling provisions for vertically integrated companies of Directive 2003/54/EC and it is dedicated to take a proactive attitude in applying legal, functional and accounts unbundling.

The following recommendations are a demonstration of this proactive attitude. EURELECTRIC considers that the elements listed in these recommendations could form the basis of the compliance programme that each company has to adopt.

The electricity industry is committed to the best application of unbundling provisions as enshrined in the Directive and EURELECTRIC believes that unbundled network operators should as much as competitive entities contribute to a properly functioning, competitive electricity market and adopt a customer focused attitude, e.g. through implementing efficient processes for supplier switching¹.

RECOMMENDATIONS

To ensure the independence of network operators with legal, functional and accounts unbundling, EURELECTRIC considers that the following needs to be ensured for functional unbundling:

- **Put in place guarantees of equal treatment for all network users**

- Information flows

It is of prime importance that in the course of their business, network operators do not disclose to the companies of their holding structure that are active in generation, supply &/ or trading any information, which is not also made available to third parties and could give them a competitive advantage. This requires network operators and the other companies of the same holding to establish clear working separation (i.e.: “Chinese walls”). Likewise, and in the same view of ensuring non-discriminatory behaviour, network operators must also procure their services (e.g.: balancing, losses, intra-day allocation ...) on transparent legal and market terms.

Preservation of confidentiality also raises the question how to handle common services. For EURELECTRIC, these should remain permitted for evident reasons of economy of scale provided that they do not constitute a means to transfer information between networks on the one hand and generation, supply or trading on the other hand. It must thus be guaranteed that commercially sensitive information is handled separately and that confidentiality is ensured in the most economic efficient way. Ensuring differentiated access rights to a common database or creating separate IT databases for network and generation/ supply/ trading could be ways of achieving this.

¹ Supplier switching is however not a networks activity in all countries, e.g.: in the UK, it is carried out by suppliers.

- Relations with network customers

Besides contractual access to networks, the operation, maintenance and reinforcement of the grid must be ensured by network operators on a purely non-discriminatory basis. All customers must in this respect be treated equally, irrespective of their supplier. In addition, distribution network operators must, in their relations to network customers, ensure that they do not privilege the supply company belonging to the same holding structure.

- **Adopt a compliance programme and monitor its application**

EURELECTRIC considers that the compliance programme required by the Directive will play a major role in strengthening the culture of unbundling of vertically integrated electricity companies. This programme must be implemented by the network entity to ensure that the behaviour of its personnel is kept non-discriminatory. EURELECTRIC however believes that the programme must also be made known to the competitive businesses of the vertically integrated company so that these behave correspondingly. Accordingly, the adoption and monitoring of the compliance programme ought to be a group responsibility.

EURELECTRIC takes the view that the compliance programme must take account of all relevant network related procedures on functional unbundling and notably the flow of commercially sensitive information.

- **Guarantee network operators with effective decision-making rights and sufficient resources**

In application of the Directive, network operators must be entrusted with effective decision-making rights on the operation, maintenance and development of network assets. The parent company however remains with necessary governance and supervisory rights that amongst others cover control of return on assets, i.e. approve the annual financial plan or any equivalent instrument of the network business and set limits to its level of indebtedness. Provided they do not exceed the terms of the approved financial plan, the construction and upgrading of network lines must be decided by the relevant network operator without involvement of the parent company.

In order to make the decision-making rights result in concrete actions, EURELECTRIC considers important that the network entity has sufficient resources at its disposal.

- **Have distinct network personnel from generation/ supply**

For the independence of decision-making and to avoid privileged relations between the network operator and other companies of the same holding structure, the personnel working in the network business has to be distinct from that working in generation, supply or trading. More precisely, EURELECTRIC is of the opinion that the network operational staff and management must not be the same as the one involved in day-to-day operation of generation, supply or trading.

For economic reasons, it should however remain possible that the network staff also works for other entities of the holding structure on purely administrative or technical tasks, e.g. maintenance of plant transformers. In this case however, the network personnel must guarantee the confidentiality of the information it obtains and the payment of the network service function must be based on market prices.

- **Ensure independence of the network personnel**

As required by the Directive, the professional interests of the network management need to be taken into account to ensure their independent behaviour. For this, the following must be guaranteed:

- the salary of the senior network personnel must not be materially based on the performance of generation, supply or trading;
- the appointment/ termination of mandate of the network management is to be decided by the network entity without involvement of generation, supply or trading. The appointment of the executive network management (CEO, CFO...) could however be decided by the holding structure;
- when leaving the network business for electricity generation, supply or trading, employees must be made aware of their responsibilities regarding unbundling, and in particular the information they can not transfer to their new employer, for example through compliance training.