



Business and Industry Advisory Committee to the **OECD**

Comité Consultatif Economique et Industriel Auprès de l' **OCDE**

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## Statement by the Business and Industry Advisory Committee to the OECD

on

### THE INTERFACE BETWEEN ICCP COMMITTEE WORK AND COMPETITION COMMITTEE WORK

October 12, 2005

#### **BACKGROUND AND INTRODUCTION**

The explosive growth of electronic commerce, coupled with dramatic changes in information, computer and communications technologies, has had a profound effect on the global economy and has given rise to what has been termed the “Digital Revolution”. Key indicators suggest that information, computer and communications technologies will continue to drive the world economy for many years to come. For example, between 1995 and 2002, information and communication technology (ICT) investment contributed approximately 0.83 per cent to GDP growth in the United States, compared to 0.5 per cent during the period between 1990 and 1995.<sup>1</sup> Similar increases in ICT investment contributions occurred in the majority of OECD countries.<sup>2</sup> Indeed, information, computer and communications technologies have the potential to fuel global economic growth for many years to come. However, in order to ensure that the potential for growth is realised, an integrated policy strategy needs to be developed. Relevantly, governments need to create optimal conditions for the digital economy to flourish. This includes, *inter alia*, a healthy economic environment characterised by well-functioning markets, openness to trade and competition. BIAC recognises that the interface between ICCP and competition is an important one, and believes that a pro-competitive policy framework that promotes innovation and investment is essential to continuing to obtain the benefits of the Digital Revolution.

We have already seen several examples where work covered under the ICCP Committee mandate is also discussed within the Directorate for Financial and Enterprise Affairs’ Competition Committee. Specifically, the Competition Committee WP2 paper on “Regulatory Asymmetry, Substitute Services, and the Implications for Regulatory Policy” (DAF/COMP/WP2(2005)3), and most recently, the “Draft Report to Council on Experiences with Structural Separation (‘the Draft’) (DAF/COMP/WP2(2005)1/REV1). This latter paper reviews country experience in implementing the 2001 “Recommendation of the OECD Council concerning structural separation in regulated industries”, and it draws on all the

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<sup>1</sup> OECD Productivity Database, September 2004 [[www.oecd.org/statistics/productivity](http://www.oecd.org/statistics/productivity)].

<sup>2</sup> Ibid.

OECD work on structural separation since 2001. With regards to ICCP/TISP activities, the preparation of the Draft seeks also to incorporate a report prepared in 2002-2003 to evaluate costs and benefits of structural separation of local loop facilities for the TISP working party (DSTI/ICCP/TISP(2002)13/FINAL). BIAC believes, however, that the Draft does not properly capture the special circumstances and intricacies of the ICT sector and that therefore its conclusions do not properly reflect these differences.

### **SPECIFIC COMMENTS ON THE DRAFT REPORT TO COUNCIL ON EXPERIENCES WITH STRUCTURAL SEPARATION RECOMMENDATION, REVISED VERSION 1**

The following examples illustrate cases where comments are made out of context. The paper makes general statements about the benefits of structural separation, which are somewhat misleading because it is implied that the statements apply to all industries. While BIAC does not dispute the fact that the statements may be true in respect of some industries, the following remarks do not correspond to the conclusions reached in the TISP Working Party's report (DSTI/ICCP/TISP(2002)13/FINAL).

#### **Example 1:**

*“Separation limits the need for regulation that is difficult, costly and only partially effective”* (para 13, page 5).

In comparison, the TISP Working Party's report comments that separation “will result in parts of the existing regulatory regime becoming redundant. However, **some forms of access regime would still be required** to govern commercial access to the network. Simply splitting up the wholesale and retail operations of a firm would not necessarily eliminate the market power of the wholesale unit with respect to rival firms. An unregulated wholesale division could charge all retailers (each in effect would be unaffiliated after structural separation) the monopoly price for the input. **Thus, it is likely that price regulation will continue to be necessary.** But how would such regulation of the structurally separated wholesale supplier result in lower regulated wholesale rates than those set on the basis of forward-looking long-run incremental costs (LRAIC) or “best practice” benchmarking (as occurs in current regulatory procedures)? **A range of other regulatory issues will also need to be resolved.** For instance, once LoopCo is operating, will the incumbent be permitted to develop its own network and re-integrate? If so, what will LoopCo be able to do to compete? To what extent will LoopCo be allowed to develop value-added services to maintain and expand its business. How will the pricing and regulatory policy be set up to allow LoopCo to compete? Will vertically integrated new entrants be permitted to set up new loops to compete against LoopCo?” (page 26) (emphasis added).

#### **Example 2:**

*“Separation stimulates innovation and efficiency in the competitive services”* (para 13, page 5).

In comparison, the TISP Working Party's report comments that “[i]t is **not evident that ownership separation would result in greater innovation.** Structural separation is likely to have some success in regard to promoting competition and this in turn could promote network enhancement. But some analysts have voiced concerns that **structural separation could be detrimental in regard to promoting innovation.** They consider that in many OECD countries, the changed stock market sentiment towards telecommunication operators may well mean that it is the incumbents with the benefit of a steady cash flow that could be in the best financial position to enhance the network and the local loop. And structural separation threatens to weaken the ability of incumbents to make such crucial investments” (page 24) (emphasis added).

Example 3:

“*Separation eliminates cross-subsidisation*” (para 13, page 5).

In comparison, the TISP Working Party’s report comments that separation “improves information and **restricts** cross subsidisation. Vertical separation, by separating the competitive from the non-competitive activities, **could help to prevent** cross-subsidisation” (page 28) (emphasis added).

**CONCLUSION**

BIAC is pleased that a revised version of the Draft paper, REV2, has been released and welcomes the efforts to address some of the concerns raised above. However, we believe that these changes still do not adequately capture some of the remarks made in the TISP paper (DSTI/ICCP/TISP(2002)13/FINAL). As such, BIAC welcomes the decision to delay approval of this document, and to provide the Draft paper to the TISP for clarification. We hope that this paper can be discussed at the upcoming TISP meeting, scheduled for 5-6 December 2005.