

1. This note presents an assessment by the Competition Committee on recent experiences with Structural Separation in Regulated Industries and its proposal for a revision of the 2001 OECD Recommendation on the subject for adoption by the Council.

1. Introduction

2. On 26 April 2001, the Council adopted its Recommendation Concerning Structural Separation in Regulated Industries [C(2001)78/FINAL] suggesting to Member countries that they consider the implementation of structural measures in regulated sectors in appropriate circumstances. The Council Recommendation stated that the Competition Committee would serve as a forum for consultations on the application of the recommendation and that the Committee would review country experience with the Recommendation and report to the Council.

3. The Recommendation was accompanied by a detailed report that considered the benefits and the costs associated with the adoption of structural separation policies.¹ Both the Recommendation and the report advocated careful consideration of the potential pros and cons of structural separation versus the potential pros and cons of behavioural measures. Section I.1) of the Recommendation specifies:

“When faced with a situation in which a regulated firm is or may in the future be operating simultaneously in a non-competitive activity and a potentially competitive complementary activity, Member countries should carefully balance the benefits and costs of structural measures against the benefits and costs of behavioural measures.

The benefits and costs to be balanced include the effects on competition, effects on the quality and cost of regulation, the transition costs of structural modifications and the economic and public benefits of vertical integration, based on the economic characteristics of the industry in the country under review.

The benefits and costs to be balanced should be those recognised by the relevant agency(ies) including the competition authority, based on principles defined by the member country. This balancing should occur especially in the context of privatisation, liberalisation or regulatory reform.”

4. In 2006, the Competition Committee reported to Council on the implementation of the Recommendation. The report [C(2006)65] considered the costs and benefits of structural separation, examined in detail a selected set of examples of structural separation in five sectors and provided a summary of country experiences across the OECD as a whole. The 2006 report concluded that the Recommendation was still important and relevant and should remain in place as it is. In particular, its suggestion to balance the costs and benefits of structural separation was still considered relevant, as was the view that the costs and benefits were likely to vary based on the economic characteristics of the industry in the country under review. The Council endorsed the conclusions of the Report relating to maintaining the Recommendation in its current form and invited the Competition Committee to report back in three years’ time on the implementation of the Recommendation [C/M(2006)12, Item 162].

5. To fulfil its role as a forum, the Competition Committee and its Working Party No. 2 have recently held several discussions addressing structural separation in four sectors: electricity, gas, railways and telecommunications. Based on these discussions, a report on developments related to structural

¹ OECD, *Restructuring Public Utilities for Competition* (2001) and OECD, *Structural Separation in Regulated Industries* (2001).