



Functional and Structural Separation

Regulatory Authorities in the member states of the European Union (EU) operate on the basis of the EU regulatory framework, which is incorporated into the national legislation. The implementation of the regulatory framework aims at the liberalization of Electronic Communications markets and services and the achievement of healthy competition in the benefit of the consumers.

Under the recent review of the European Regulatory Framework (November 2007), the European Commission has stated its intent to offer an additional "regulatory tool" to Regulatory Authorities in order to achieve sufficiently competition in EU markets. This regulatory tool is functional separation. In practice, there are three types of separation: (1) Accounting Separation (AS), (2) Functional Separation (FS) and (3) Structural Separation (SS).

Accounting Separation (AS) is a tool for examining whether the incumbent complies with its obligations regarding the non-discriminatory treatment and price control. AS offers regulatory certainty since the proposed publication of certain accounting/pricing lists of the incumbent, increases transparency regarding the allocated costs of the regulated services.

Functional Separation (FS) is a means for ensuring fair competition which leads to freedom of choice for consumers in telecommunications markets with dominant operators. In the case of FS, it is necessary to separate the infrastructure of the incumbent's network from the units that offer services using this infrastructure. Although separate functional business entities are created, the overall ownership remains unchanged. In the **United Kingdom**, the regulatory authority, Ofcom, has already established FS for British Telecom since 2003, whereas the Swedish government has proposed legislation for the establishment of FS of the Swedish incumbent in March of 2008. Also, FS has been

implemented in **New Zealand** after consultation between the regulatory authority and the government. In **Italy**, it was announced that FS would be implemented in Telecom Italia following legislative regulation for strengthening the regulatory authority, whereas in **Poland and Spain**, the issue is still under consideration and developments are expected soon. As telecommunications markets become more dynamic, FS enables equal access (leveled play field) to the network between the newcomers in the market and the retail arm of the incumbent. At the same time, newcomers are given the opportunity to create services using the existing infrastructure of the incumbent.

Finally, **Structural Separation (SS)** is defined as the complete separation of the network infrastructure and the units that are offering network access services by using the infrastructure of the incumbent into separate business entities that are operating as entirely independent companies with different ownership. An example of the implementation of SS is **Ireland** where Eircom, the local incumbent, has voluntarily proceeded to SS.

The European Commission considers that when properly used, FS may be useful for national regulatory authorities, in order to deal with persistent problems related to competition in the telecommunications market when other solutions have been proven ineffective. Actually, this regulatory measure has been included in the proposals for the

new regulatory framework, which are currently under discussion in the Council and the European Parliament. In order to ensure that FS in a country does not lead to distortion of competition in the single market, the proposal of each national regulatory authority for the introduction of FS must firstly be approved by the European Commission.

What applies in Greece?

Law 3431/2006 on "Electronic Communications and other provisions" authorizes EETT to implement the provisions of the Legislation on Competition (Law 703/77) as well as Articles 81 and 82 of the Rome Treaty and Regulation (EC) 1/2003, in order to monitor the healthy development of competition in the Greek Electronic Communications market.

Up until now, EETT has been exercising its regulatory role for the improved operation of competition in the telecommunications market to the benefit of the consumer, but it has not exercised its responsibilities in its capacity as Competition Committee in this market with regards to the FS of the Organization with dominant position in the market.

EETT constantly monitors the development of the telecommunications services markets and studies the consequences on the (possible) distortion of these markets due to the vertical integration of the Greek incumbent, while at the same time remaining in constant consultation with its partners - the Regulatory Authorities of all member states of the EU for this issue.