This note is submitted by the Delegation of Switzerland to the Working Party No. 2 FOR INFORMATION at its next meeting on 27 October 2000.
OECD Working Party No. 2 on Competition and Regulation  
Country Experiences with Separation/Integration in Regulated Industries  

Swiss Contribution

1. Basic characteristics of the sectors considered

1.1 Electricity

General

1. The fact is that the markets are at present closed. Electricity supply is notable for the coexistence of a large number of regional and local monopolies (there are more than 1000 electricity companies in Switzerland). Electricity companies are for the most part vertically integrated and majority-owned by the communes and cantons. Market regulation is still mainly the responsibility of the cantons.

2. Under a Federal Act of 1930, suppliers were able to obtain a right of expropriation for the transmission of electricity via third-party operators’ existing networks. However, this provision, the main purpose of which was to avoid having to build parallel networks, remained a dead letter and so did not help to open up the markets in Switzerland.

3. A Federal bill aimed at opening up the markets (Loi sur le marché de l’électricité, LME) is currently before Parliament. It draws heavily on European Directive 96/92/EC, and provides for the markets to be opened up over a six-year period on the basis of “Regulated Third Party Access”.

4. A number of complaints based on Article 7 Lcart (abuse of dominant position) have been lodged with the Competition Commission by both suppliers and industrial sector consumers of electricity with the object of gaining access to third party operator networks. In one such case, the Commission has confirmed in an obiter dictum that refusal to grant network access could come under Art. 7 Lcart. The Competition Commission has to date set up two inquiries and also two prior inquiries concerning companies refusing access to their networks.

Price regulation

5. There are not, at Federal level, any special regulations with regard to the transmission and sale of electric power.

6. At Federal level, only legislation of a general nature, Lcart and the Act on price surveillance (RS 942.20), come into consideration.

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1 See Art. 44 b of the Federal Act on electricity installations (SR 734.0).
2 Bill tabled on 7 June 1999.
3 Decision BKW FMB Energie AG, DPC 2000/1, p. 29. See also the EEF case, DPC 2000/2, p. 153.
7. In some cantons, electricity prices are on the other hand specially regulated.

8. The draft LME provides that the price charged by network operators for the transmission of electricity has to be aligned on the costs that are essential to efficient operation of the network (Art. 6, §1). That principle has still to be incorporated into subordinate law.

1.2 Natural gas

9. As with the electricity sector, the gas markets are at present closed. And likewise, the sector consists of a series of regional and local monopolies. The organisation of the markets is at present largely based on cantonal law.

10. Under a Federal Act of 1963 on pipeline installations (SR 746.1, Art. 13), pipeline operators are obliged to carry third parties’ natural gas. However, this provision remained a dead letter, and so did not help to open up the markets.

11. As in the case of the electricity sector, there is at present a debate about whether to open up the markets by means of a Federal Act along European lines (Directive 98/30/EC). Work on drafting this legislation is by no means as far advanced as it is in the electricity sector, the Office fédéral de l’énergie having in May 2000 submitted a pilot study to the Federal authorities for internal discussions.

1.3 Telecommunications

General

12. The telecommunications sector is governed by the telecommunications Act of 30 April 1997 (RS 784.10; LTC) and the Order on telecommunications services (RS 784.101.1; OST), both of which came into force on 1 January 1998. That date also marks the end of the Swisscom monopoly and the opening up to competition of the telecommunications services markets.

13. Swisscom, the original operator, is a limited company in which the Confederation necessarily has the majority of the capital and the votes (Federal Act on the organisation of the federal telecommunications company, RS 784.11. Art. 6).

14. Telecommunications market operators have to have a concession granted by the Commission fédérale de la communication (Art. 4-5 LTC). So far, all applications for concessions have been granted.

15. Art. 11 LTC provides that telecommunications suppliers with a dominant position, which is the case of Swisscom, are required to guarantee that other suppliers are interconnected in a non-discriminatory manner and in accordance with the principles of a transparent pricing policy aligned on costs.

16. Any disputes relating to interconnection come within the competence of an independent commission, the Commission de la Communication.

17. There is no telecommunications market that is not open to competition. Regarding the Local Loop, for example, where Swisscom still enjoys a dominant position, Art. 11 LTC is applicable.
Price regulation

18. Under Art. 34 OST, interconnection prices have to be aligned on costs, with the following elements being taken into account (since 1 January 2000):

- The costs deriving from the interconnection service (relevant costs);
- The additional long-term costs of the components of the network taken into consideration, and those that derive solely from the provision of an interconnection service (long-run incremental costs - LRIC);
- A constant mark-up, equivalent to an equitable share of the joint and common costs;
- The interest on the capital invested, in line with usual practice in the sector.

19. Prices of telecommunications services are set by the operators, who enjoy freedom of action in this respect. There is, however, one exception which concerns the prices of services relating to the universal service, and there it is the Federal Council (government) that sets the ceilings (Art. 17 §2 LTC).

2. Case of separation and effects

2.1 Telecommunications

20. Where telecommunications are concerned, there is no decision or regulation providing for structural separation, meaning that Swisscom and other operators can therefore be active at all levels of the industry. On the other hand, the unbundling of accounts is stipulated for interconnection.

21. Art. 36 OST provides that suppliers of telecommunications services must draw up separate accounts for interconnection services. The said account must show internal and external services separately and include the internal accounts for interconnection services.

22. The unbundling of accounting should enable the Commission de la communication to ensure that the rules on interconnection service pricing are respected and to prevent cross-subsidisation between regulated and non-regulated services.

2.2 Electricity

23. Under current legislation, there is no obligation for electricity companies to separate their activities, meaning that an electricity company can quite legitimately carry on all the activities that the sector involves.

24. The draft LME provides for structural separation at transmission network level (high-voltage), and the intention is to set up a single national company responsible for its operation (Art. 8 of the Bill). The company would not itself be able to be in any way involved in electricity generation or distribution, nor could it have shares in companies in those sectors. The Bill does not, on the other hand, prohibit generators and distributors from possessing shares in the network company, or even controlling it.

25. Where the distribution network is concerned, on the other hand, no structural separation is planned (low and medium-voltage network).
26. The Bill provides for the **unbundling of accounts** where activities relating to generation, transmission, distribution and other activities are concerned (Art. 7 of the Bill). The object of this separation is to avoid discrimination, cross-subsidisation and distortions of competition.