

General remarks

Although we believe that the previous consultation round brought up all relevant topics to be considered in a sufficient manner, FGSZ welcomes the continued efforts of ACER to improve the process and the assessment criteria alike.

FGSZ is somewhat surprised how much the issue of governance gained in importance in comparison to the previous consultation. While examining governance, special attention needs to be paid not to limit competition unintentionally.

The IT audit criterion list is a great improvement in the transparency of the process, but we would have liked to see the same level of clarity regarding the case study as well. With regard to the IT audit, enough time needs to be provided to the interested booking platforms to procure auditing services and to carry out the audit.

We would like to note that none of our answers are confidential.

Contact person:

[REDACTED]

Email and phone: [REDACTED].

Annex 1.

Question 1. Please confirm that these legal requirements are still relevant.

Answer 1.

Only some are relevant (Please mark only those numbers that you consider no longer relevant, using the table above.)

11, 12. Although legally relevant in general, it was clarified by German TSOs during the 2018 public consultation these criteria shall not apply to the relevant IPs.

18. This continues to be a subjective category because there is no methodology provided how cross-subsidisation is measured:

- What is the 'cost' a network user 'pays' for the usage of a booking platform?
- How are 'costs' 'attributed' among network users?

We assume that in case of any methodology applied, network users would not 'pay' the same 'cost' for the usage of a booking platform depending on many factors (location, number of markets being present in, level of network usage frequency etc.). Without clear definition and metrics, this requirement appears to be misleading.

21. Data exchange should be defined between the platform operator and the concerned TSO, as there may be multiple choices the TSO can select from.

Question 2. For each of the three Booking Platform currently active in the EU, please mark the numbers of the legal requirements next to it, which in your view are not complied with.

Answer 2.

GSA: N/A

PRISMA: N/A

RBP: As far as RBP is concerned, all legal compliance criteria are met in the EU regulation category. In the national regulation category all national criteria are met except for the service of capacity upgrade, which can be developed within an agreeable timeframe and at a minimal development cost based on similar, existing services.

Annex 2.

General remark to Annex 2.

Particular attention shall be paid to competition law when assessing the topic of governance, i.e. absolute statements shall be avoided when governance structures – otherwise accepted by the existing stakeholders of different capacity booking platforms – are evaluated. Consulting upon aspects that are marginal from the service provision's point of view pose the risk that this may limit market participation and potentially exclude platform operators from the market. When using platform services of similar kind (e.g. booking.com, Amazon.com), users use (and pay for) services along well-defined terms and conditions, where governance plays minimal role.

We would like to highlight the fact that there are multiple capacity booking platforms operated by TSOs since the start of the applicability of the CAM NC with different governance structures, yet this question always appears as relevant when there is an open competitive situation between a capacity booking platform operated by a TSO and a TSO-owned platform operator company.

In the introductory text of the consultation, transparency and non-discrimination are explicitly mentioned and referred to **in the TSO context** as a general principle. The same introduction and the below questions, however, do not provide the logical link between this **general TSO obligation** and the said principles' direct translation into **governance requirements towards capacity booking platforms**. We therefore do not agree with the phrasing of questions No. 3 and No. 4., which only mention booking platforms operated by TSOs.

We acknowledge that **governance is an important business factor** for the directly involved stakeholders of a capacity booking platform, but the governance requirements themselves cannot be derived from general legal obligations but from business needs, as explained later.

Question 1. Please indicate the measures that you consider necessary for the governance of the booking platforms to offer users transparent and non-discriminatory services, in the light of the application of Union and national competition and regulatory framework.

Answer 1.

As far as EU legislation is concerned, the only legal provision governing capacity booking platforms is CAM NC Article 37 1. "Transmission system operators can operate such platforms themselves or via an agreed party that, where necessary, acts on behalf of them towards the network users." This provision does not state – either explicitly or implicitly – any requirement regarding governance. Therefore expectations on governance can be made on business terms but not as a legal requirement, as governance models are chosen following the business decisions of the directly involved stakeholders.

Question 2. Do you consider that the legislation implicitly requires a governance structure for the Booking Platforms to ensure-, as a minimum, that a dedicated budget and a dedicated independent management ensures autonomous decisions on Platform developments, IT developments and maintenance, based on the market needs?

Answer 2.

No such implicit legal requirement exists.

Regarding dedicated independent management, this is a business issue to be decided by the stakeholders directly involved with the relevant capacity booking platform, i.e. those whom such a decision would affect directly. Regarding dedicated budget, this is a necessity due to general financial planning reasons.

Question 3. Are there other areas/aspects in which you consider that the Booking Platform should be independent from the TSO(s) in which it is embedded?

Answer 3.

No. This is a business question and the business decision of any platform operator together with the platform user TSOs, who would most probably bear the financial implications of such a decision.

Question 4. Do you consider that the above-mentioned minimum set of measures would guarantee, by effect, a sufficient degree of independence to ensure the transparent and non-discriminatory operation of a TSO-led booking platform towards the network users?

Answer 4.

We believe that there is no logical link between the governance model of a booking platform and the transparency and non-discrimination towards its network users.

Annex 3.

Question 1. Please let the Agency know whether the domains presented below are:

All relevant.

Some are not relevant (Please explain which ones are not relevant and why not.)

Answer 1.

All domains are relevant. There are some questions that need to be double-checked, however:

- Item a.73. The question does not make sense because all decisions must be backed up by business reasons.
- There is an empty line between item a.91 and a.92 with a score of 0.5 points.
- Item a.125. These should be only necessary if a.123 and a.124 were not adequate to handle the needs. Hence the question is superfluous.
- Item a.180. We would like to remark that there are other scaling possibilities in the industry, not only the physical one.

Annex 4.

Question 1. Do you consider that the evaluation method outlined above, analysing completeness, consistency, robustness, relevance and efficiency of the case study proposal, is fit for the assessment on how the booking platforms improve functionalities through continuous development, user friendliness, secure access, change management and data security and backup?

Answer 1.

Based on the information provided, it cannot be assessed whether the outlined methodology is appropriate or not. In comparison to the IT audit criteria, which are very clear and exact, the outlined criteria and their description for the case study lack details and clarity upon which it could be assessed.

Due to this lack of upfront transparency, we see an increased threat of potential disputes arising at a later stage of the process, as it was the case in the previous selection round and propose to update the current consultation with these points detailed.