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International Survey of Benchmarking Terms

ITechLaw's first international survey on benchmarking terms and conditions was conducted during the summer of 2010 by the law firm Gorrissen Federspiel on behalf of ITechLaw. Survey responses were provided by law firms established as leaders in the outsourcing field.

The survey covers a total of 12 countries in Europe, the United States and Canada and comprises all relevant legal and commercial aspects of benchmarking in large scale IT infrastructure outsourcing agreements.

Executive summary

With only very few variations, the survey confirms clearly that infrastructure outsourcing agreements contain benchmarking provisions today. As a general rule, benchmarking can be called upon once each year after a limited initial grace period.

Generally, a benchmarking exercise takes between three and six months to complete. However, a significant – but not surprising – result is that benchmarking is rarely initiated in practice.

According to all responses, a benchmarking process will include a benchmarking of prices. For half of the countries, service levels will also be included in a benchmarking process. This will normally be in addition to or in combination with prices. However, no country reported the inclusion of usage of capacity as being a separate item for benchmarking exercises. As for the scope of comparison, most common is a comparison of prices per unit followed by a comparison between service towers.

Always benchmarking of prices, optional to the customer once each year after grace period of one or two years

In most countries, automatic adjustment of prices following a benchmarking process is not the main rule. In countries where this is the main rule, the parties will often negotiate and agree on adjustments, even though the outsourcing agreement stipulates that automatic adjustments should be made.

If automatic adjustments apply, most outsorcing agreements will impose an obligation to adjust on a unit price or service tower basis and in accordance with the upper/top quartile of the peer group. Furthermore, a deadband of typically 5-10 percent will apply, meaning that no adjustment is made unless the deviation between the actual prices and the benchmarking result exceeds 5-10 percent. Interestingly, only 50 percent of the responses indicated that a cap (typically 10-20 percent) will apply to any automatic adjustments.

One third of the submissions indicated that the service provider will have discretion in choosing which prices to adjust. Also, rather surprisingly in one third of the cases, the benchmarking can lead to a price increase.

The parties can either agree to a benchmarker, or the customer can choose one, often from a list of third party firms or on the basis of agreed parameters. The cost of the benchmarking will vary and not much information as to the level of cost seems to be available. Five countries have indicated a cost level of approximately EUR 50,000 – 400,000.

The benchmarker will typically select the peer group. The peer group selection will sometimes be based upon pre-agreed parameters and in most cases benchmarking provisions will set out a minimum number of peers. The trend seems to be that most benchmarking processes offer a great level of transparency as to how the peer group is selected and a higher level of transparency than has been seen in the past.

The submissions show that if the parties must agree on price adjustments, then in half of the cases the outsourcing agreement will include a termination right if no agreement can be reached.

Further to the majority of the submissions, the service provider may provide input and reasonable financial assumptions which will or must be taken into consideration by the benchmarker, even where such assumptions are not explicitly set out in the outsourcing agreement.

One of the main items we were looking for in the responses to the survey was whether trends on specific terms and conditions could be distinguished based on the maturity of the market (country) in question – maturity

in terms of the penetration of outsourcing as a business model or business lever. Generally, the United States and the United Kingdom are perceived to be the most mature markets followed by the Nordic countries, then Germany and then the Mediterranean countries. On a detailed level there is no such trend. However, the big picture is clearly that benchmarking provisions have significantly more teeth in the mature markets.

Background and scope

International benchmarking experiences

This survey was initiated by ITechLaw as part of the work in the ITechLaw Outsourcing Committee. The purpose of the survey is to gain insight into and obtaining structured knowledge about benchmarking in large IT infrastructure outsourcing agreements.

To our knowledge, this survey is the first of its kind. Therefore, it represents a unique opportunity for contract managers, legal advisors and others who are dealing with benchmarking and large IT infrastructure outsourcing agreements to benchmark their benchmarking experiences and knowledge against international practices.

The survey's results and conclusions drawn from the submissions are documented in this report and will be presented at the European ITechLaw conference in Berlin on 28 and 29 October 2010.

Scope of the survey is IT infrastructure outsourcing deals > USD 100 millions excluding network services, application development and maintenance

The survey deals exclusively with IT infrastructure outsourcing. Any references herein to outsourcing agreements are to IT infrastructure outsourcing agreements, which encompass so-called computer management, hosting, or data centre services. Furthermore, the survey is limited to agreements having a duration of three years or longer and with a total value of USD 100 millions or more over the term of the agreement. The survey does not deal with network services or application development and maintenance services.

While the survey results only apply to large infrastructure outsourcing in principle, we believe that the terms and conditions agreed in the big and complex outsourcing agreements are driving commercial practice and therefore the survey results are relevant in smaller and medium sized transactions as well.

For purposes of this survey, "benchmarking" means the ability of a party to an outsourcing agreement unilaterally to call upon a benchmarking to be conducted by an independent third party.

The survey covers the following countries:

- Canada, CA
- Germany, DE
- Denmark, DK
- Spain, ES
- Finland, FI
- France, FR
- The United Kingdom, GB
- Italy, IT
- The Netherlands, NL
- Norway, NO
- Sweden, SE
- The United States, US

The survey results are provided by law firms having significant experience with complex outsourcing. There is one contributing law firm per country and the survey results express the perception of commercial practices by that law firm. Section 4 "Participants" includes a list of all participants.

The results are divided into the same seven categories as the questions were:

- Benchmarking in general
- The benchmarking exercise
- Consequences of benchmarking
- Designation and remuneration of the benchmarker
- Reference group selection
- Other consequences of benchmarking
- Relationship to the service provider and the benchmarker

For each category, key findings, summaries of the responses and analyses are included in the below section 3 "Findings and analyses".

The report summarising the survey results has been drafted by Ole Horsfeldt, partner at Gorrissen Federspiel and Chairman of ITechLaw's Outsourcing Committee. Analysis and conclusions drawn express solely Mr. Horsfeldt's opinion and not necessarily those of the individual contributors to the report.

The survey does not express the opinion of ITechLaw or its officers and board members and the survey does not constitute legal or commercial advice.

Findings and analyses

The benchmarking in general

Key findings

With only few variations, the results show that the majority of all in-scope outsourcing agreements contain benchmarking provisions. As a general rule, benchmarking can be called upon once each year after a grace period of one, two or three years and will take three to six months to complete. However, benchmarking is rarely initiated in practice.

Summary

The result shows that benchmarking provisions are

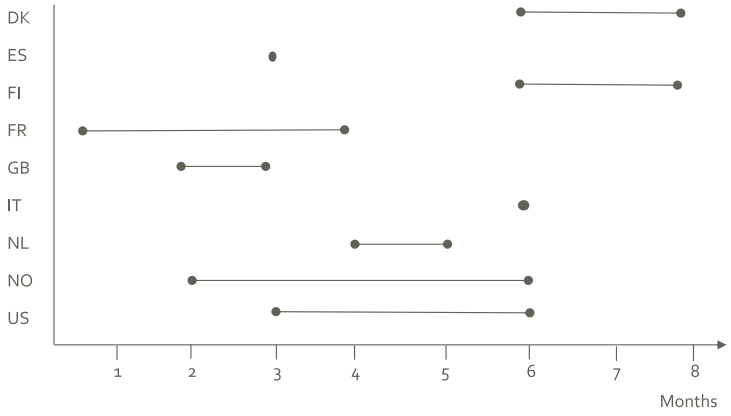
- almost always included in outsourcing agreements, and
- rarely used in practice.

Almost all countries reply that outsourcing agreements customarily include benchmarking provisions. However, the Italian response states that only between 20-30 percent of all outsourcing agreements include benchmarking provisions. Furthermore, the Spanish and the US responses state that such provisions are "becoming increasingly present in the market" and that "most but not all include benchmarking provisions".

In Italy, only between 20-30 percent of all outsourcing agreements include benchmarking provisions. In Spain and the US most but not all outsourcing agreements include benchmarking provisions

The duration of the benchmarking process varies greatly, from two weeks (in France) and up to eight months (in Denmark and Finland). See figure 1 on the responses to question 3 below:

Figure 1: *Question 3 - Duration of the benchmarking (Note: CA replied "unknown")*



Most of the responses show that benchmarking can be exercised once every year after an initial grace period. Roughly one half of the participants reported a one year grace period and the other half a two to three year grace period. Only the Dutch submission shows a general three year grace period for benchmarking. See figure 2 and 3 on the responses to questions 4 and 5 below:

Figure 2: *Question 4 - How often can a customer call a benchmarking?*

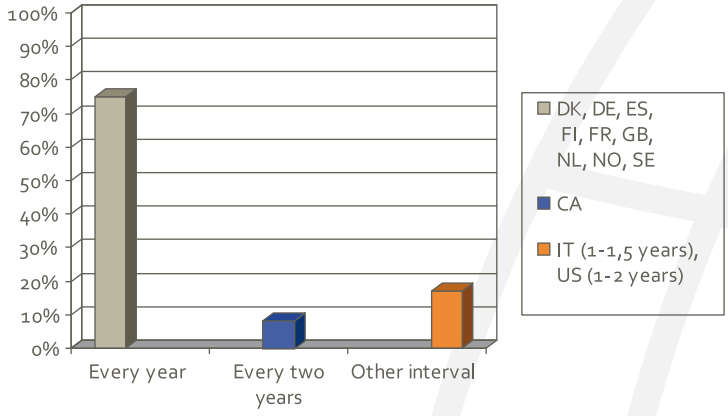
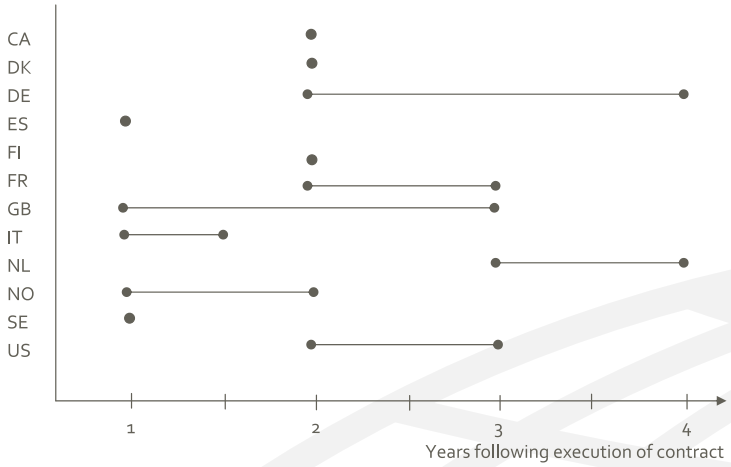


Figure 3: *Question 5*
- Grace period after contract commencement



Analysis

With no notable exceptions, all responses from the mature outsourcing markets show that benchmarking provisions are a standard lever in almost all outsourcing agreements. There is little doubt that consultancy industry (including lawyers) and the benchmarking industry will drive benchmarking to become a standard issue also in less mature outsourcing markets, such as Italy.

The results as to the frequency of benchmarkings and grace periods are not surprising. It does not make commercial sense to benchmark more frequently than every year or bi-annually due to the costs and efforts associated with a benchmarking exercise. Similarly, if prices have recently been re-negotiated or the outsourcing agreement is of a recent date, there is no commercial justification for benchmarking in the near future.

It will come as no surprise to practitioners that benchmarking exercises are rarely conducted and the survey results confirm this across all involved countries. Rather, a benchmarking provision serves as a negotiation lever and a sophisticated and detailed provision in terms of regulation of the benchmarking process and adjustment rights will vastly improve the customer's negotiation power and consequently the obtained price reduction.

Each question posed under this survey is related to elements that can be agreed in respect of a benchmarking provision and which may serve to the advantage of either side in an outsourcing deal depending on how the provision is agreed. Therefore, the survey results are indicative on the current "best practice" balance between customer and service provider interests.

The benchmarking exercise

Key findings

All benchmarking processes will include a benchmarking of prices. For half of the countries, service levels will also be included in a benchmarking process. This will normally be in addition to or in combination with prices. This means that two different models apply. Either – and that is the most common solution – the prices of the peer groups are "normalised" on the basis of the actual service levels, i.e. the actual prices are benchmarked in light of the service levels. Or the service levels are benchmarked separately, namely to evaluate whether the agreement in question operates on the basis of service levels at a competitive level. Service levels and service credits are two of the main cost drivers in an outsourcing arrangement and it is evident why prices and service levels generally are looked upon in conjunction.

No one reported the inclusion of usage of capacity as being a topic for benchmarking exercises. That is surprising as this is a methodology promoted by TPI (who advises on a great part of the large deals). In addition, if the pricing model of the agreement is based on installed capacity this is a highly relevant topic for benchmarking.

As for the scope of comparison, most common is a comparison of prices per unit followed by a comparison between service towers. Submissions from the United Kingdom and

Sweden were the only ones to indicate that a comparison of total price of all service towers could take place. Obviously, a comparison and adjustment per service tower provides for much less transparency than a comparison and adjustment per unit price.

All benchmarking processes will include benchmarking of prices. Half of all submissions state that service levels are benchmarked – normally in addition to or in combination with prices

Summary

See figures 4 and 5 on questions 6 and 7 below showing what benchmarking exercises will include and the scope of comparison.

Figure 4: *Question 6*
- What will a benchmarking exercise include?

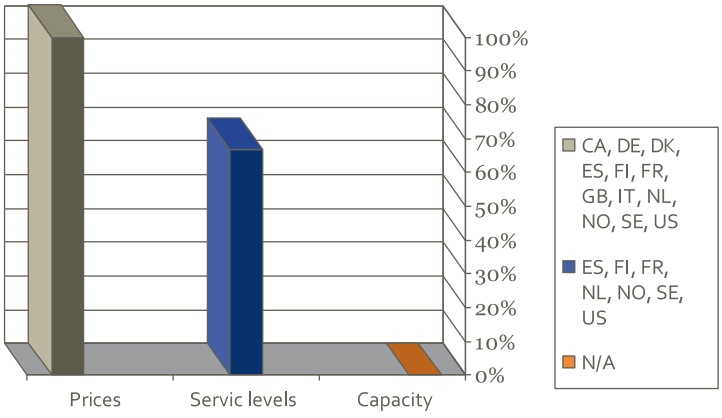
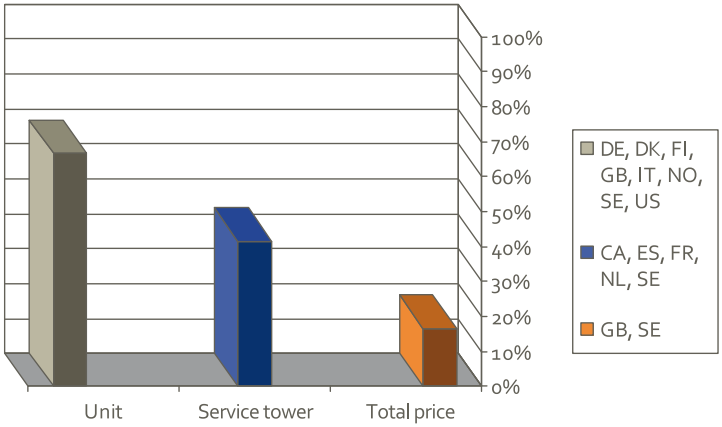


Figure 5: *Question 7*
- What is the scope of comparison?



Analysis

It is all about the price. You will see surveys and academic reports stating that the outsourcing companies are more interested in getting the service, access to talent and the relationship than the price. That is not the commercial reality. In practice, most deals are all about providing savings (while of course providing a decent service). Therefore, benchmarking exercises focus almost exclusively on the service/price ratio with an emphasis on the price. The fact is that services and service levels to a large extent are more or less standardised or common within the relevant industry and therefore prices generally are easy to compare.

In many instances, the pricing model of the outsourcing agreement will be based on installed capacity and not consumption (or the consumption based model will in reality be based on installed units and not units actually used). In those cases, the ability to conduct proper capacity planning will be a key cost driver and we believe that future benchmarking provisions will take this into consideration.

Consequences of the benchmarking

Key findings

An obligation for the service provider to adjust prices automatically following a benchmarking process is not the main rule. In countries where this is the main rule, the parties will often negotiate and agree on adjustments, even though the agreement stipulates that automatic adjustments should be made.

If automatic adjustment is agreed, which is not the main rule, a deadband (5-10 percent) will often apply and only sometimes a cap (10-20 percent). If no automatic adjustment, half of the times a termination right is admitted to the customer, if agreement on adjustments cannot be reached

If automatic adjustments apply, most outsourcing agreements will impose an obligation to adjust on a unit price or service tower basis and in accordance with the upper/top quartile (those with the cheapest prices) of the peer group. Furthermore, a deadband will apply (typically 5-10 percent). A deadband means that that no adjustment will take place within the deadband, i.e. if an actual price is two percent too expensive, then there will be no adjustment, if the deadband is two or more percent.

Interestingly, only 50 percent of the responses indicated that a cap (typically 10-20 percent) will apply. A cap works to the effect that the service provider cannot be forced to automatically adjust prices by a percentage exceeding the cap.

One third of the submissions indicated that the service provider will have discretion in choosing which prices to adjust, on condition that the customer is provided with an overall saving that matches the total gap between actual prices and the benchmarker's perception of the market prices calculated on the basis of the entirety of all services.

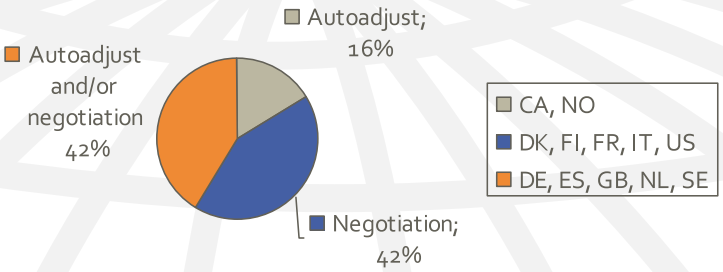
Also, in one third of the cases, the benchmarking can lead to a price increase.

About half of the submissions held that adjustments are made retroactively to the date of initiation of the benchmarking.

Summary

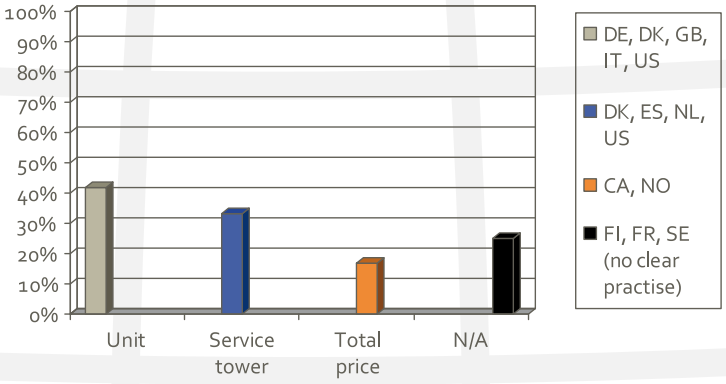
The consequences of benchmarking are not easily categorised and vary from country to country. It seems that in most countries an obligation to adjust the prices automatically is not the main rule. Only in Denmark, Norway and the United States this seems to be the main rule. In Sweden and the United Kingdom automatic adjustments are common, but not the main rule. The Nordic countries and the United Kingdom did add, however, that in practice many parties will still chose to negotiate and agree to price adjustments, even if the agreement calls for automatic adjustments. See figure 6 on question 8 below which reflect how the parties will act in practice, in some cases disregarding the actual provisions of the outsourcing agreement.

Figure 6: *Question 8*
- Most common consequence of benchmarking



As could be expected, adjustments (if automatic adjustments apply) are made on the same basis on which the benchmarking is conducted (see responses to question 7 above). This means that adjustments are primarily made on a price per unit basis, secondary on a service tower basis and thirdly on a total price basis. Three countries replied that no clear practice apply. See responses to question 10 set out in figure 7 below.

Figure 7: *Question 10*
- Will adjustments be made on a price unit level, per service tower or for the total price?



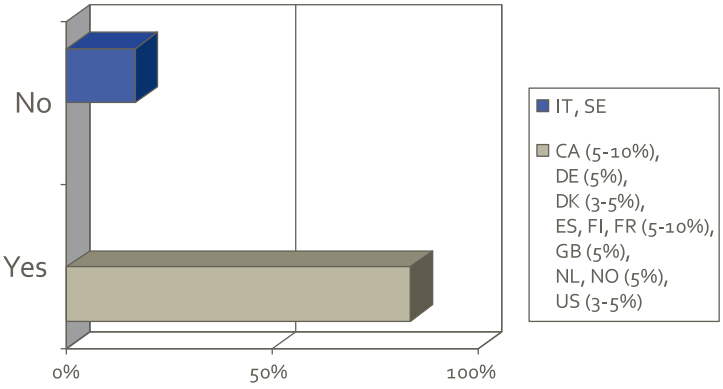
If an automatic adjustment applies, this will most commonly imply an obligation for the service provider to adjust in accordance with the best performers of the peer group in

terms of having the cheapest prices, often termed as the upper or top quartile of the peer group. Only two countries replied that adjustment would be in accordance with the mean (France and the Netherlands) and Finland replied that no clear practice applies.

Also, a deadband for which no adjustments shall be made will apply in most countries if automatic adjustment is agreed. Only Italy and Sweden indicated that no deadband will apply. The deadband will typically be below or equal to five percent. However, in Canada, Spain, Finland and France a deadband of 5-10 percent is most commonly used. A deadband reflects – rightly or wrongly – the uncertainty associated with benchmarking.

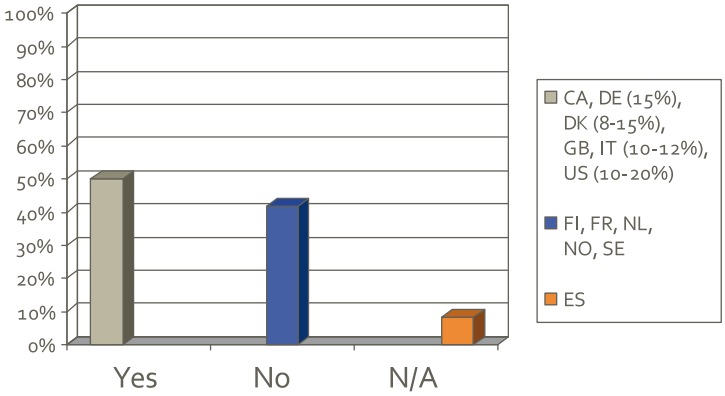
See responses to question 12 set out in figure 8 below.

Figure 8: *Question 12*
- Will a deadband apply to any adjustment?



If automatic adjustment is agreed, 50 percent of the responses indicate that a cap (typically of 10-20 percent) for adjustments will apply. See figure 9 on responses to question 13 below.

Figure 9: *Question 13*
- Will a cap apply to any adjustments?



In most cases, the service provider will not have any discretion in choosing which prices to adjust and the benchmarking cannot lead to a price increase. See figure 10 and 11 on responses to questions 14 and 15 below:

Figure 10: *Question 14*
- Will a service provider have any discretion in choosing which prices to adjust?

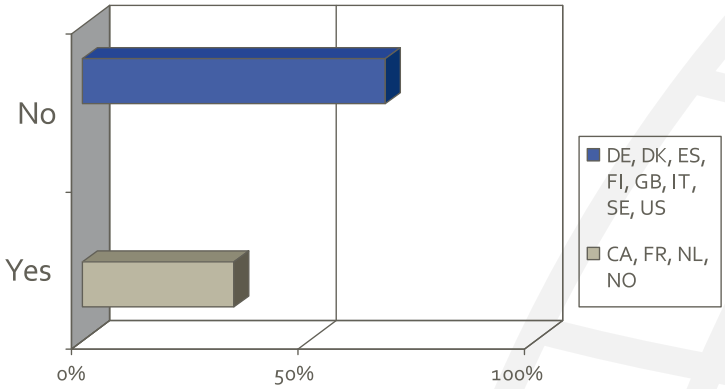
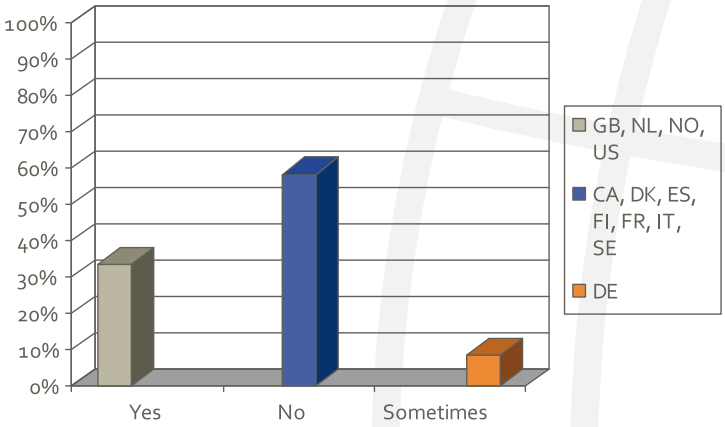


Figure 11: *Question 15*
- Can benchmarking lead to a price increase?



Finally, the submissions show that the date on which any automatic adjustments will take effect differs from country to country. For half of the countries there is no clear practice in the area, whereas the other half (Canada, Germany, Italy, Spain, the United Kingdom and the United States) replied that the most common practice is that adjustments will take effect as of the date on which the benchmarking process was initiated.

Analysis

As for the consequences of the benchmarking, the results show how each geographic region of the participating countries (the Nordic countries, western European countries, the southern European countries and Canada and the United States) does not seem to have developed similar practices which could perhaps have been expected. There are clear differences in the responses for each of the Nordic countries, for each of the southern European countries and for the countries overseas.

One tendency is, however, clear; benchmarking is in all mature outsourcing markets the dominating adjustment mechanism designed to secure competitive prices. The differences in terms of adjustment mechanism and associated commercial terms are based on individual market practices and not on the maturity of the market.

There are two surprising findings. Firstly, a third of the responses indicated that a benchmarking could lead to price increases. Secondly, the service providers in a number of countries are allowed to choose which prices to adjust. On the other hand, it is not a surprise that service providers in a relatively high number of countries will adjust on a service tower basis and not on a price unit basis.

In mature outsourcing markets, benchmarking leading to a price increase seems to be a thing of the past and this will likely be the pervasive commercial practice in other markets soon.

Granting the service provider discretion in choosing which prices to adjust is a practice pursued by service providers in most markets but generally customers (at least in mature outsourcing markets) will attempt to stay clear of this practice because it will allow the service provider to undermine the savings immediately obtained as the service provider will not decrease the prices of price elements where the service provider will expect an increased consumption.

To some extent the choice between service tower based or unit price based adjustment of prices depend on the prevailing price model (and transparency granted) of the market in question. Not all markets have yet fully accepted a transparent unit price and consumption based price model and in those markets service providers will generally adjust prices at their discretion or per service tower.

Designation and remuneration of the benchmarker

Key findings

The parties can either agree to a benchmarker or the customer can choose one, then often from a list of third party firms or on the basis of agreed parameters. The cost of the benchmarking will vary and not much information as to the level of cost seems to be available. Five countries have indicated a cost level of approximately EUR 50,000 – 400,000.

Summary

When choosing the benchmarker, the benchmarking provisions will usually set out a particular selection process. Having said that, there is no clear commercial trend for how benchmarkers are designated. In most cases the parties will agree or decide on a benchmarker on basis of certain and agreed parameters. In five countries (Denmark, France, Germany, Norway and the United Kingdom) it will customarily be up to the

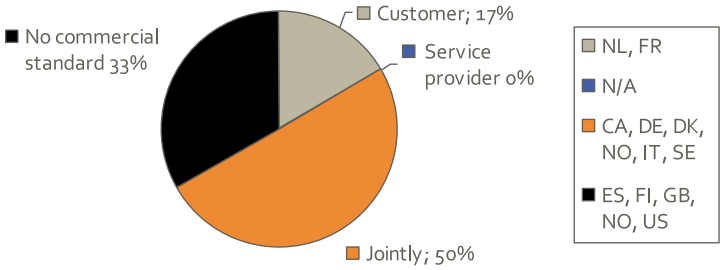
customer to choose the benchmarker from a pre-selected list of benchmarking firms.

As for the fees paid to the benchmarker, only five countries have indicated a level of cost as follows – these costs are, however, relatively uniform:

- Denmark EUR 200,000 – 400,000
- Finland min. EUR 50,000
- Italy EUR 200,000 – 400,000
- Norway EUR 50,000 – 100,000
- US USD 250,000 – 500,000 (approximately EUR 183,000 – 365,000)

The parties will customarily either split the costs of the benchmarking or there is no clear commercial practice. Only in the Netherlands and France, the customer will carry the associated costs. Below see figure 12 on the responses to question 19.

Figure 12: *Question 19 - Who pays the benchmarker fees?*



Analysis

The responses reflect that there are relatively few actual benchmarking exercises conducted. The wide range of the level of costs of the benchmarking indicates how the cost of a particular benchmarking processes will naturally depend on the scope of the benchmarking, what framework and process is agreed by the parties up front (involvement of the parties, limitations as to peer group etc.) and presumably also on the level of discretion left to the benchmarker.

The result of this survey indicates that the market has adapted the position that both parties must bear the risk that market prices may decrease over the term and that consequently it is fair that the parties share the costs involved with establishing a baseline for revised prices. Another interpretation, which we know is guiding at least one global service provider, is that the service providers want to ensure that they "co-employ" the benchmarker and that the benchmarker is not simply a consultant to the customer. One important aspect to this line of thinking is also that service providers have begun requiring that the benchmarker is not hired on a contingency basis.

Reference group selection

Key findings

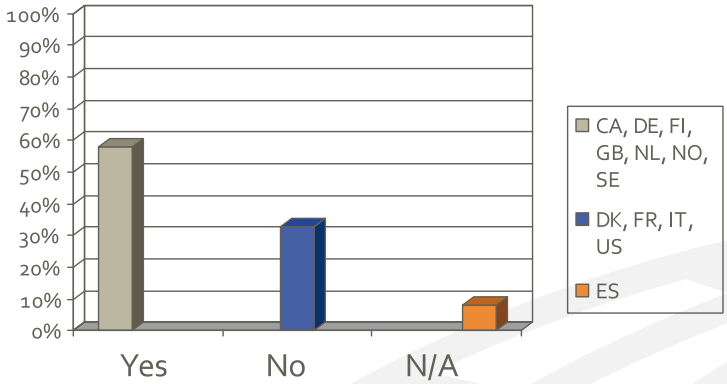
The benchmarker will typically select the peer group. The peer group selection will sometimes be based upon pre-selected parameters and two thirds of the responses stated that benchmarking agreements will set out a minimum number of peers. The trend seems to be that most benchmarking processes offer a high level of transparency as to how the peer group is selected.

Summary

More or less all participants reply that the benchmarker will select the peer group and normally this will be on the basis of pre-selected, broad parameters set out by the parties.

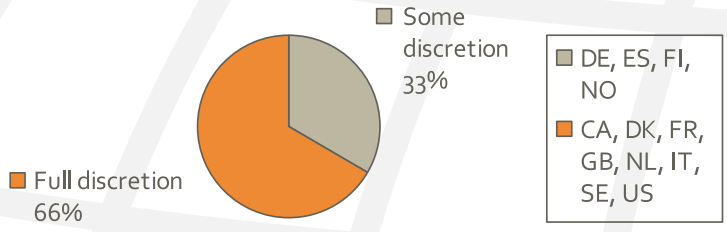
The responses to question 21 shown below in figure 13 reflect the requirements in benchmarking provisions to the (typically minimum) number of peers. Where a number is agreed, only four countries have indicated the actual number, which will be in the range of minimum 3-6 (Denmark (3-5), Norway (4-6), the Netherlands (4-5) and the US (3)).

Figure 13: *Question 21*
- Will the benchmarking provisions set out requirements as to the number of peers?



Responses to question 22 in figure 14 below show how the majority of benchmarking provisions will leave full discretion to the benchmarker and let the benchmarker normalise any relevant factors before conducting the benchmarking. Where only some discretion is left to the benchmarker, the responses typically state that the parties to some extent will pre-determine the parameters within which normalisation must take place.

Figure 14: *Question 22*
- What discretion is left to the benchmarker in terms of "normalisation"?



The responses show that it is either part of the benchmarker's reporting obligations and/or customary that the benchmarker will report and provide transparency as to how the peer group was selected, including documenting that the comparators used to benchmark are in fact comparable. The German reply simply states that reporting obligations can be agreed upon and the response from the Netherlands adds that there is full disclosure on selection of the peer group, whereas there is almost no disclosure on the analysis or normalisation.

Analysis

A third of the participants note a trend for benchmarking provisions to set out parameters within which the benchmarker's normalisation must take place.

Normalisation is the process applied by the benchmarker allowing the benchmarker to adjust the prices available in the benchmarker's database to be comparable to the specific prices subject to the benchmarking at hand. In other words, data from the outsorcing agreement to be benchmarked can never be compared to the benchmarker's market data without analysis and the benchmarker will never possess data that precisely match the circumstances relevant to the data of the specific agreement. Customarily there has been no transparency as to the normalisation process and the analysis conducted by the benchmarker – despite the fact that this process is fundamental to the outcome of the benchmarking. The survey result may indicate a trend towards greater transparency.

Similarly, customers and service providers alike have customarily not been interested in the number of peers used as comparators. There is a growing sentiment among service providers that the statistical basis for benchmarkings is too weak and that benchmarkers in the past have made comparisons between very small numbers of data sets. The problem at hand is that it is very difficult (and expensive) to make comparisons with a large number (more than four to six) of data sets. On the one hand the parties to a benchmarking exercise prefer greater statistical certainty. On the other hand, however, the customer side will want to limit benchmarking costs.

Other consequences of benchmarking

Key findings

A number of submissions state that automatic

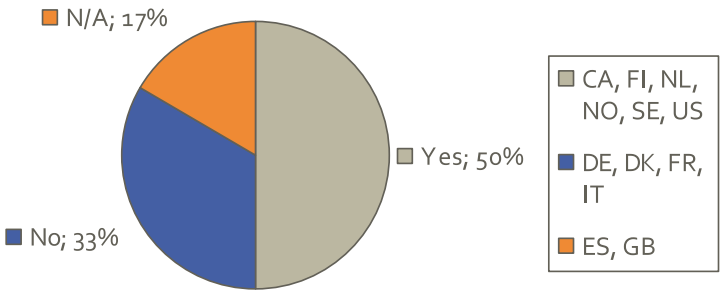
adjustments of prices will not apply and that adjustments will consequently depend on negotiation. In those cases half the submissions show that the customer will have a right to terminate for convenience if no agreement can be reached.

Summary

The responses indicate that about half of all benchmarking provisions will allow a termination right if adjustments cannot be settled. It is added by Denmark, the Netherlands and the United Kingdom that such termination right is often applied if no automatic adjustment applies.

See responses to question 24 set out in figure 15 below.

Figure 15: *Question 24 - Termination if agreement on adjustments cannot be made?*



If a dispute were to arise on the results of the benchmarking, almost all responses point at the dispute resolution mechanism in the relevant outsourcing agreement.

Responses from a minority of countries reported that a secondary "appeal" benchmarking at times is used as a conflict resolution mechanism.

Analysis

There is likely a trend towards automatic adjustment. However, if automatic adjustments cannot be agreed as part of the outsourcing agreement, the service provider industry generally recognises that there must be a consequence, if the parties after a benchmarking exercise cannot agree on price reductions. Granting a customer a termination for convenience right is generally perceived to be the solution to this problem.

The real problem, however, lies somewhere else; namely which terms and conditions should apply to the termination option. Generally, termination following a benchmarking process will be possible on more favourable terms to the customer than compared to the customer's general right to terminate, which may be subject to pre-agreed exit fees. However, there is no clear indication of the difference, if any, between any fees applicable to termination following a benchmarking process and ordinary exit fees.

Relationship to the service provider and the benchmarker

Key findings

Typically, the service provider may provide input and reasonable financial assumptions which will or must be taken into consideration by the benchmarker, even where such assumptions are not explicitly set out in the agreement.

Summary

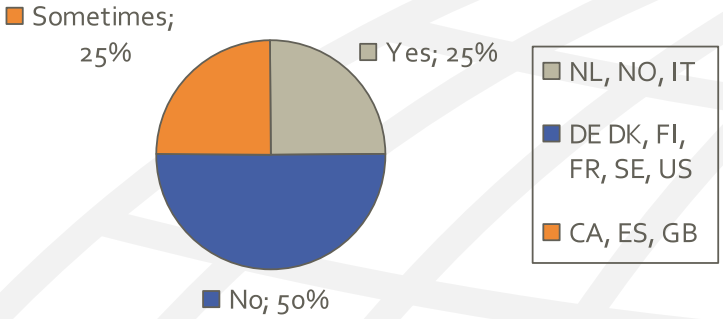
Most of the responses state that the benchmarking process will allow for the service provider to provide input and that the service provider's financial assumptions will or must be taken into consideration, even if such assumptions are not set out in the agreement.

Responses from a few countries mention that an agreed process may govern the service provider's involvement or ability to provide input. Sweden states that no clear commercial practice applies in this area. In the United Kingdom the service provider will normally only to a very limited extent be able to provide input or require that certain financial assumptions be taken into consideration, without these

being explicitly set out in the agreement.

Finally, about a quarter of the responses indicate that the benchmarking arrangement will specifically prohibit the re-use of data from the benchmarking exercise in the benchmarker's database. See figure 16 on question 27.

Figure 16: *Question 27*
- Does the agreement govern whether the benchmarker can use data for other parties' benchmarking exercises?



Analysis

The survey result shows that the benchmarking exercises to a large degree will allow for reasonable considerations to be taken into account by the benchmarker, even if not expressly agreed between the parties or the relevant parameters are not set out in the outsourcing agreement. However, following the trend related to transparency and normalisation, it is clear that the final determination, and therefore a large element of discretion, is left with the benchmarker.

The opportunity to introduce factors and assumptions not directly based on the terms and conditions of the outsourcing agreement at hand represent the single most important lever to the service providers to affect the result of the benchmarking and conversely the biggest threat seen from a customer perspective to a predictable result of the benchmarking. As evidenced by the United Kingdom submission, it is likely that customers in mature outsourcing markets as part of the negotiation of a benchmarking provision will seek to flesh out any assumptions of a financial character relevant to the pricing and establish that such (agreed) assumptions are exhaustive for the purpose of a benchmarking.

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