ERGEG's Public Consultation of 21 April 2010
Draft guidelines of good practice on indicators for retail market monitoring

Comments on ERGEG's consultation questions and on the document as a whole

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ERGEG's consultation questions (page 12/50 of the document)

1. Should any of the proposed indicators be left out of the final document? No, but indicators 14 and 16 might be merged.
2. There are at least two indicators which are not present: (a) quality of service should be related to compensation schemes and performance regimes. Although these are hinted at in the document, there is no specific indicator capturing the presence or not, and the extent of: consumer awareness; and automatic compensation schemes for poor quality of service, including delays in switching; (b) a potentially crucial indicator, the "average switching € saving" on an average bill, which greatly varies by country/region and determines the "opportunity cost" of switching, i.e. the extent to which consumers will actually even bother to consider switching or not. Anecdotal evidence for domestic electricity customers suggests that the annual saving on an average bill might be as low as €10 p.a. in some countries, and in excess of €100 p.a. in others.
3. Some indicators might be measured differently. For instance, strategic interaction might be considered in an oligopolistic setting rather than via "Structure-Conduct-Performance" type of indices like those put forward in the document (CR and HHI). The document in general might suffer from a slight bias in favour of the S-C-P approach (as clearly seen in the statement of the problem on page 14/50).
4. Suggested data collection frequencies are appropriate and feasible. I agree with the annual/quarterly frequency, to be differentiated depending on the type of indicator; in this area, given national and even regional peculiarities (and different cultural attitudes towards complaining!), the level and quality of coordination/engagement between ERGEG/ACER and the NRAs will be of paramount importance.
5. Indicators 1, 4, 5, 6, 9, 10, 11, 14, 15, 16, 17, and 18, must be published on a disaggregated basis if we want to be serious about retail market monitoring. I understand that some Member States might have starkly different views about the dissemination of information, and I have experienced this directly in both energy and transport regulation, but transparency of information is exactly one of the main Third Liberalisation Package objectives, and as such it must be pursued with enhanced and renewed enthusiasm by NRAs and, at a pan-EU level, the new Agency.

Comments on the document as a whole

1. There is a Structure-Conduct-Performance approach (from market conditions to structure, to market outcomes, to customer satisfaction) that does not fully take into account the strategic nature of electricity and gas retailing (oligopoly) and the games being played by different retailers. Strategic interaction should be explicitly assessed, both nationally and at a cross-border level, given that many of the current retailers are owned by multi-national utilities.
2. The document states on page 15/50 that, in some cases, a third party (for instance, an Ombudsman) collects information about complaints. In my view, NRAs and ACER should not rely too much on Ombudsmen collecting information for them, as such organisations tend to be (in some cases at least) under-staffed and – for obvious reasons – devoid of general regulatory enforcement powers beyond case-by-case decisions. Customer complaint data should be collected and held, in my opinion, by NRA themselves, "Consumer Focus" organisations, and – in the interest of harmonisation and international benchmarking – ACER.
3. The complaint classification system should take into account (table on page 18/50) the "digital divide" (particularly relevant in some Member States and in some regions/age categories) when it comes to ease of switching, switching delays, and "unwished" switching (i.e., deception and unfair commercial practice). As noted in the document, some corrections should be made (although this is admittedly difficult) for cultural factors such as the tendency, in certain Member States, for consumers to complain (much) less than socially optimal and, in others, to complain "too much" or more or less unruly, without a systematic approach.
4. Price comparison websites are an issue. The document understandably reflects, in more than one instance, the British experience with retail market liberalisation in electricity, gas, and dual fuel. Price comparison websites (and more recent sophistications such as "cash-back" sites) are very well known in the UK. They are actively used (but: "digital divide" again) and generally free. This is not always the same in other countries. In some countries, comparison websites are virtually unheard of. In others, there is just one or two of them. In others, such sites are subscription-only and must be paid for. In others, they are sponsored by the industry and there is therefore a blatant conflict of interest to be taken into account. In others, the country is so small that there is no point in having even one comparison website for the whole market. Therefore, one size does not fit all in this case and neither NRAs not ACER should, in my view, be over-reliant on comparison websites when it comes to measuring the level of information and/or ease of switching. This does not mean, of course, that such websites cannot be used as one of the possible information sources (for instance, with respect to the availability of different types of tariffs) to monitor the degree of retail market openness and dynamism.
5. High retail margins (discussion on page 24/50) can be the symptom of a malfunctioning market or of efficiency differences (or both). Disentangling these two effects is not easy. In fact, this is one of the typical attack point of regulated utilities versus regulators and competition authorities. I suggest that the final version of the document discuss the possibility of looking at efficiency effects by comparing prices[1] regionally AND internationally

[1] Ideally, one should compare underlying retail costs, but the data is normally unavailable in practice, unless NRAs had statutory powers to extract that sort of information from retailers in each and every Member State. However, cost information can be extracted indirectly not only via price benchmarking, but also though yardstick competition mechanisms

(international retail pre-tax, pre-levy/duty benchmarking), and by looking at possible explicit yardstick competition price mechanisms between retailers, as done – to my knowledge – by at least one Member State at the moment with respect to input prices[2] (as a minimum) to ascertain the extent to which high retail margins are due to, say, procurement and commercial efficiency as opposed to just lack of competition and oligopolistic behaviour. The price/input cost benchmarking approach (to investigate cost reflectivity of pricing) is politically more viable than the "abuse of dominant position" avenue, for which the competition law hurdle is generally much higher for a public investigation authority.

6. Price spreads should be measured both regionally and internationally. One should control for the distinction between different forms of payment and different metering strategies. In some Member States, pre-payment meters are virtually unheard of. Some Member States are more advanced in terms of smart metering and (potentially) smart grids (hence, active demand side management) than others. Some Member States retain time-of-day tariffs and night-time pricing (related, for instance, to electric heating), some do not, either for historic (energy policy: gas heating, district CHP, etc.) or climatic reasons. Some of these differences should be fleshed out in the final version of the document, as they do influence price spreads and price benchmarking. The current version of the document seems to be inspired to the long-term experience of one or two Member States which clearly led the way in terms of energy retail market liberalisation, but we should now consider EU-27 as a whole.
7. The invention of "new" products (page 30/50) should not be overstated in this industry (homogeneous product and commodity nature of the raw material). All "new" products in energy retailing are naturally confined to metering, billing, customer rapport, cross-utility offers (not just dual fuel), financial products (maintenance insurance for instance), loyalty cards (some cards such as "Nectar" are now spreading to Continental Europe), cash-backs, etc. We are talking about (mainly) commercial as opposed to product innovation. Of course, commercial innovation is important, but how much will it really influence switching choices at the end of the day? In such a market, my suspicion is that what still matters is the bread-and-butter combination of price and quality/customer service, taking the basic product as given.
8. Market concentration and S-C-P approach. I have mentioned before the slight bias of this document in favour of an "S-C-P" industrial organisation approach. However, since the market is oligopolistic, it might be interesting to consider a degree of strategic interaction between players, which can be tacit and – as such – escape the radar of standard "abuse of dominant position" procedures. Interaction takes place at a regional level within the same

on some aspects of retail cost, for instance input purchases. Since retailing is now assumed to be a contestable activity, the Third Liberalisation Package itself might, a bit paradoxically, subtract data extraction powers from NRAs, although this is an interesting matter for discussion in the future. My view is that one should not assume ex ante that energy retail markets are perfectly functioning as competitive or even just contestable activities, because this is an empirical issue that should be subject to testing. In fact, this is why this consultation exists in the first place – retail cost/price, not just network T&D, efficiency benchmarking should not be taboo.

[2] The document rightly notes that utilities tend to hedge their fuel and materials purchases in any case, so that tracking retail prices to commodity cost, a bit like in all fossil fuels, might be a fruitless exercise when retailers buy forwards and not spot. Hedging strategies are generally not in the public domain, again as noted by the document, which might make this type of comparison difficult. However, forward prices are public and any yardsticks might be based on those, as opposed (or in addition) to spot prices.

country, as well as between countries (for many retailers are now owned by large multi-national utilities). International strategies are interesting (for instance, when international utilities use a "captive" market at home to subsidise entry into a new, foreign, and perhaps more competitive market) and certainly not new. They have been observed in energy, water, telecoms, post, and even railways. The Commission can now avail of a cross-border Agency to coordinate efforts. It is my strong hope that ACER will be allowed to do this, in a similar fashion to what BEREC should be doing in telecoms. ACER and ERGEG, on the assumption that they will co-exist in the future, should be powerfully equipped to look at strategic international interactions in energy retailing.

9. Branding. It is well known from one or more Member States that, if left to their own devices, electricity and gas incumbents will try to retain their old brands and, even when dismantled or restructured by public powers, the surviving retailers will try to market their product under their historic brand (at least in some regions) to exploit customer loyalty effects (especially strong, for cultural reasons, in some Member States, and for some age groups and/or those suffering from the "digital divide"). This is true at both a domestic and international level, given the internationalisation process observed over the last decade or so. For this reason, NRAs, ACER, and the Commission should be particularly determined in making sure that effective de-branding takes place. The goalposts are already set in the draft document (end of section on page 34/50).
10. As a general point, given different competences in different Member States (for instance, on connections and metering), the final document should perhaps make a statement on the level of clarity needed when comparing price/quality/switching/market openness – both within and between countries. What does "retailer" mean in practice across Member States, and how do retailers interact with DSOs on some or all aspects of the service offer? Once again, this separation is not necessarily clear in practice (as it should be in theory, given the Liberalisation Package), and is certainly not clear to all customers in every Member State.
11. As a final point, a naïve observation. I am not sure that EU citizens are sufficiently aware of:

    (a) the Third Liberalisation Package itself, and what it means for them[3];
    (b) the interaction between their NRA and consumer organisations/panels/fora on issues of retail market liberalisation; and
    (c) the role (to be) played by ERGEG and ACER in this process.

    I have worked on mobile voice/data roaming in telecoms and on international rail traffic and ticketing at a pan-EU level, where the same issues are being faced. Citizen awareness should certainly be enhanced in such a crucial area of European regulation and cooperation.

[3] For instance, it is well known that customer information and ease of switching is potentially more difficult in gas than it is in electricity (thus affecting speed of switching towards dual fuel contracts as well) because of structural factors and the slower pace of upstream industry restructuring in gas. It is laudable that the document states that electricity and gas will be tackled separately (and separately from dual fuel, where applicable), because gas might suffer from a "small sample" problem, and from issues which have already been overcome in electricity retailing. A possible data constraint example for gas is actually provided in the draft document on page 49/50, where the number of gas respondents in the bar charts turned out to be around ½ vis-à-vis electricity.