

bne-statement on:

Public Consultation on Draft Advice on Customer Complaint Handling, Reporting and Classification

In the following, the Bundesverband Neuer Energieanbieter e.V. (bne) (Federal Association of New Energy Suppliers) presents its comments on the recommendations on complaint handling in the scope of the ERGEG survey (E09-CEM-26-03) dated 17 September 2009. We welcome the strengthening of consumer rights in principle, but see many instances of a clear risk of overregulation in the ERGEG recommendations due to the great number of requirements. For that reason, we would like greater emphasis to be placed on creating market-oriented framework conditions which enable market self-regulation and reduce the need for external controlling guidelines.

3.1.1 Information on the bill on how to complain

The bne's response to recommendation 1:

The implementation of the recommendation is favourable on the European level in order to guarantee that a minimum of contact information is available to consumers.

Concerning the German market, the recommendation has already been implemented and thus requires no additional need for action on the national level: The existing German legal framework, such as that of Article 14 of the Value-Added Tax Act, among others, already requires the service provider to provide the customer with his address information on the bill. In current conventional practice, bills already consistently contain information on the service provider's address and contact information.

The bne's response to recommendation 2:

The specified communication channels for contacting do reflect the broad spectrum of available options, but the selection from amongst them for contacting the service provider must be at the provider's discretion. An arrangement exceeding beyond this stipulating which channels of contact must be available, or even that customers be able to choose their channel of contact from a broad palette, should be rejected. New business models frequently diverge from conventional supply concepts and sometimes limit themselves to inexpensive service channels such as E-mail and post contact. Otherwise the products cannot be presented to the customer in a cost-effective manner. Drastic encroachments on suppliers' product design of this sort are not to be supported. Requirements on channels and the resulting restriction of product diversity act the same way in limiting customers' product selection options. Unsuitable products will vanish from the market as a result of market self-regulation, in particular from low demand.

3.1.2. Choice of the complaint channel within service provider

The bne's response to recommendation 3:

A supplier's quality of service is a decisive unique feature. The embodiment of quality of ser-

vice is thus a supplier's most inalienable instrument for a distinguished product design, particularly in the handling of customer complaints, and must thus be left to the suppliers and may not be subject to a regulation. As a basic principle, there should be more than one way of contacting the service provider open to the customer; how many there are depends on the business model of the provider in question and the service level desired as a point of distinction for the competition. But a regulation on how new energy suppliers/service providers are to design their business modes is not necessary.

3.1.3. Statutory complaint handling standards shared by all service providers

The bne's response to recommendation 4:

Handling customer complaints promptly and to the full satisfaction of the customer is in the vested interest of the new energy suppliers. The members of the bne also see this as being an important opportunity for setting themselves apart from other competitors. The evaluation and implementation of complaint management in particular serves many new energy suppliers as a concrete measuring block for the satisfaction of their customers. Statutory requirements have a rather limiting and hindering effect on the process of continuous optimisation, an area which the new energy suppliers strive for in particular. Compliance with and documentation of such extensive requirements naturally also leads to considerable increases in administrative effort, and thus financial expenses, which the customer always has to bear in the end. The bne resolutely rejects a continuing bureaucratisation of the handling processes which results in higher prices. After all, the service providers must have discretion over which level of service they aim to provide with their customer support. The customer is free to select a higher level.

Requirements for an immediate response and handling deadlines are intended to protect the consumer, but are in no way productive or in line with the market. In the bne's view, customer complaint handling must be examined on a case-by-case basis, since every customer and every complaint is individual. In particular, processing times can vary greatly on account of the number of parties involved (customer, network operator, supplier) and thus lie at least partially outside of the supplier's control. The participation of third parties can result in individual cases in which even the two-month deadline cannot be met, even with a complaint management system which functions well otherwise. In this regard, the deadline was chosen arbitrarily and is inappropriate.

3.1.4. Service providers' redress schemes

The bne's response to recommendation 5:

In the new energy suppliers' experience, redress schemes have only partially been implemented to date. Damages caused to the customer which were demonstrably caused by the service provider should be compensated as a basic principle. In the process, damage compensation must always be viewed within the scope of the national damage legislation. German civil law already provides for extensive customer rights in this regard anyway. If need be, additional redress and/or compensation may take place on a voluntary basis in the scope of customer retention.

3.1.5. Compliance with alternative dispute settlement body's recommendations

The bne's response to recommendation 6:

Constitutional law provides for the judiciary for legal dispute decisions in Germany. Secondary bodies such as an alternative dispute settlement body result in ancillary jurisdiction systems which are authorised under constitutional law. Customers today have numerous means of fully voicing their complaints and exerting commensurate power over the provider via consumer organisations, federal state regulation authorities or courts. An alternative dispute settlement body as a further authority is superfluous. The bne cannot support the request for adherence to the recommendations.

Furthermore, the recommendation does not resolve the question of the assumptions of the costs for establishing such a dispute settlement body. One cannot assume that the personnel will work on an entirely voluntary and cost-neutral basis. The costs incurred may not be allocated to the energy companies under any circumstances. The consequence of that would be an additional burden on the market participants, who would have to add these costs directly to the energy prices on account of the low sales margin. In our view, this would be an unreasonable additional cost item for customers and suppliers, especially under the objective of lowering the price of electricity and gas for the end customer.

The Commission's intention in publishing the Recommendation on the principles applicable to the bodies responsible for out-of-court-settlement of consumer disputes (1998/257/EC) was to make the process more effective and expedite the settlement of disputes. A legal solution in the event of a dispute is not excluded under German law. Accordingly, legal settlement in the event of contentious problems may be demanded at any time. The alternative dispute settlement bodies, in contrast, act under the specified conditions as a sort of court of lower instance for legal authority. As such, each party can go to court to demand justice and reverse the expedition of the settlement of disputes intended by the Commission, thus producing the opposite. This would unnecessarily complicate and draw out the process. Customer problems should initially be resolved with the supplier and settled in court if a greater dispute arises which the two parties cannot solve to their mutual agreement. An additional alternative body is not necessary to accomplish this.

3.1.6. Complaint data collection by NRA

The bne's response to recommendation 7:

In principle, there is nothing opposing data collection for appropriate monitoring, as long as the effort remains within reason. The publication of complaint data, which often contain very sensitive information, must be done anonymously at all costs. Care must be taken during evaluation and preparation for publication to make sure that the complaints are disclosed accurately and correctly. A reasonable limitation of the cases is required, primarily since the reasons for complaints are quite diverse and can also be attributed to the customer's ignorance. An interpretation falsified by this aspect and the customers' orientation to the published data would have an extremely negative effect for the supplier concerned. Suppliers with good service could appear much worse without warrant.

The guarantee of access to the complaint data also entails increased effort and higher costs for the supplier, and thus for the customer as well. For that reason, the regulatory author-

ity's access to the data and the actual data collection must be implemented at the suppliers in a manner which is as simple and uncomplicated as possible.

3.2. Recommendations to third party bodies (alternative dispute settlement boards, ombudsmen, consumer bodies...)

3.2.1. Single point of contact

The bne's response to recommendation 8:

In principle, the bne evaluates the introduction of an additional single point of contact to be neutral. When viewed in a pan-European context, there are various occurrences of already existing consumer organisations in the Member States; some are central, others are established decentrally in each respective country. A determination for another single state point of contact is therefore questionable.

In Germany, there are independent consultation centres on the side of the Federal Network Agency which in recent years have developed into central and accepted points of contact. Federal Network Agency figures indicate nearly 6,000 complaints in 2008 in the field of energy. Furthermore, there are state sponsored consumer centres for information purposes and legal consultation (especially contracts) available to customers in every large city. This comprehensive system guarantees enormous consumer protection, already fulfils the tasks of a point of contact today and makes an additional single point of contact quite superfluous. The bne supports the provision of information and consumer protection. In doing so, it is decisive that only an informed customer can make free decisions on changing providers and selecting tariffs, which is a fundamental prerequisite for increased readiness to change and more competition.

Price comparisons are an expedient instrument for the consumer in order to receive greater transparency on the market. In a functioning market, reliable price comparisons are also ensured by third-party providers. An additional price comparison from the point of contact is not necessarily needed. The intended legal consultation by single points of contact is viewed critically, since it cannot substitute a professional legal consultation.

3.2.2. Prior contact with the service provider

The bne's response to recommendation 9:

It is of fundamental importance that the customer initially seeks to make contact with the service provider in order to address him with his complaint and solve the problem. The actual settlement of the dispute should in principle take place in the scope of the service provider's own complaint management system or, in the next instance, at court level. We reject alternative dispute settlement for the reasons noted under our response to recommendation 6.

3.2.3. Choice of the complaint channel

The bne's response to recommendation 10:

The exchange of information with third parties reduced only to the single points of contact, in our view. There is no need for alternative dispute settlement bodies, since said bodies are

not supported, as described in our response to recommendation 6. When establishing single points of contact, if necessary, customer-oriented channels of contact should be designed openly and with a sense of proportion in order to prevent discrimination against individual customer groups and suppliers. We reject the determination of specific channels of contact.

3.2.4. Free access for all customers

The bne's response to recommendation 11:

As already described in our response to recommendation 6, the bne is extremely critical with regard to a further alternative dispute settlement.

3.2.5. Statutory complaint handling standards within third party bodies

The bne's response to recommendation 12:

In our view, there is no need for statutory complaint handling standards within third party bodies, since, as described in our responses to recommendations 6 and 8, third parties are not necessary and the bne does not approve of them. If the bodies in question are still established, the requirements must be formulated as simply and openly as possible in order to prevent unnecessary mounting bureaucracy and overregulation.

3.2.6. Financial compensation to customers

The bne's response to recommendation 13:

*Extensive regulations on disputes and the related possibility of financial compensation to customers have been established in German damage compensation law; no customer is without protection in this regard. Based on our statements on the redress model, we reject an additional **compulsory** arrangement of compensation possibilities. Practice shows that the customer is entitled to a rather generous compensation, especially in cases where the supplier admits his error. Incidentally, the scope and extent of such an additional compensation are also a decisive distinguishing criterion in competition. Whether and to what extent the customer receives additional compensation must therefore be at the supplier's discretion.*

3.2.7. Complaint data collection by NRAs

The bne's response to recommendation 14:

The new energy suppliers strive to handle customer complaints quickly and with high customer satisfaction. As a basic principle, information on this can be reported to the regulatory authority. The rest of the argument follows the statements in Response to recommendation 7.

3.2.8. Complaint data publication

The bne's response to recommendation 15:

The establishment of an additional reporting system puts an enormous administrative burden on service providers as well as the regulatory authority. Descriptions of the complaint processes of all suppliers operating on the market and a complete list on non-compliance with the recommendations require additional human resource capacities at the regulator and contribute significantly to an even larger administration and unnecessary expenses, which are ultimately paid by the consumer. Lists on the recommendations which are not followed by

the service providers and a description of the complaint process of each individual supplier are not to be supported, since they entail considerably expenses. In this framework, suggestions on optimal procedures in particular constitute an undesired intervention in the service providers' internal processes, which we absolutely cannot endorse.

Complaint monitoring, on the other hand, is viewed non-judgementally, but it must be conducted under the premise of anonymised data.

Berlin, the 15th of December 2009