
PEER Regulatory Roundtable on Bundled Products

Proceedings of the Event

2 October 2017

The Partnership for the Enforcement of European Rights (PEER) held its first event on 2 October 2017, dedicated to the timely issue of bundled products in a range of consumer sectors such as telecommunications, travel, energy and banking.

This high-level summary of the PEER Regulatory Roundtable on Bundled Products:

- Introduces the PEER concept;
- Presents key insights on bundled products and the event's outcomes;
- Shares examples of two regulatory solutions to practical cases (and lessons learned about the process) that can be of interest to public enforcers of consumer rights when dealing with bundled goods;
- Sets out some initial thinking on guiding principles for bundled products; and
- Outlines some policy gaps and possible future actions.

The success of this inaugural PEER event speaks to the value of cooperation among different sectoral regulators in improving the enforcement of consumer rights.

1. The PEER concept

PEER is a new initiative launched by the Council of European Energy Regulators (CEER) to enhance cross-sectoral regulatory cooperation so as to strengthen the enforcement of EU consumer rights across several sectors.

Started on a pilot basis in 2017, PEER aims to enhance regulatory cooperation, at EU level, across different regulatory authorities (e.g. telecoms, financial, energy) and other public bodies (consumer authorities, data protection authorities, ombudsmen, competition authorities, etc.) responsible for enforcing consumer rights. It also promotes dialogue and engagement with organisations representing consumer interests. PEER events and an online PEER platform (hosted by CEER) serves to facilitate knowledge sharing.

2. The PEER Bundled Products Event

The 2 October event focused on three issues:

- Bundled products as a business model
- Comparing bundled product offers
- Bundled product complaints

The PEER event on bundled products attracted more than 30 attendees from telecoms (BEREC), energy (CEER) and multi-sectoral regulators, ombudsmen (NEON), the European Commission (DG JUST and DG ENER), consumer bodies (BEUC) and one national consumer protection authority¹. The event format was interactive and based on the sharing of case studies (see section 5 below) so that fellow regulators could gain tips and insider knowledge.

3. Insights from PEER Regulatory Roundtable on Bundled Products

Experts shared valuable insights on trends and emerging business models for bundled products, enabling participants to gain new perspectives on industry shifts and regulatory challenges, such as:

Bundled Products as a business model

- Bundled products are a business model that is here to stay (e.g. 80% of broadband in Spain is sold as part of a bundled product). **Bundling complexity is increasing exponentially.**
- Many companies apply a **subscription model** for such products. As the bundle grows, customers increasingly stay with their bundled service provider → **Risk of customer lock-in.**

Is it better for consumers by the bundle?

- **Bundling is not something the consumer necessarily wants** and, arguably, is not good for consumers.
- The practice risks that consumers buy **unnecessary goods/services** (buying more than they need).
- **Bundled products are supply driven** rather than demand driven. Why? Bundling can be an effective way for suppliers to increase customer loyalty. **Churn (switching out) of bundled products is low.**
- **Consumer rights are less well protected with bundled product** contracts (e.g. significant case law in Germany).
- **Accumulation of problems emerge with bundled products** e.g. contractual issues, difficulty for consumers to compare offers, uncertainty about complaint jurisdiction, data management and privacy issues, and competition concerns.

Competition issues

- Bundling can **reduce competition** (evidence from telecoms sector). Although the consumer expects the bundle to be cheaper than buying the single product, data shows that this is not always true. Telecoms operators offer discounts on bundles and in parallel increase the prices of stand-alone products.
- Bundling raises several **competition issues** (replicability, market consolidation, lack of price transparency, and **lock-in** as it is difficult for customers to switch away from the bundle).

¹ BEREC: Body of European Regulators for Electronic Communications; IRG: Independent Regulators Group; BEUC: The European Consumer Organisation; CEER: Council of European Energy Regulators; NEON: National Energy Ombudsmen Network.

Legal and contractual issues

- Distinction between **Bundled Contracts** (one contract, 2 products) and **Added Contracts** (with different companies).
- In the case of multi-company contracts, there may be **no single point of contact** for the consumer.
- **Gaps in consumer protection** through cross-sectoral contracts (see Professor Rott's slides for examples of German **cases**, e.g. a customer who is behind with his payment obligations cannot be disconnected unless the amount due exceeds 100 Euros. But this applies to an electricity supply contract of last resort and most likely not to bundled services).
- Unclear **contract conditions** may mean overlapping/contradicting contract conditions per service, e.g. discount applied to only one of the services or different switching periods per product.
- **Potential unfair commercial practices** can result and in the past bundles were explicitly prohibited in many countries (before the unfair commercial practices law came into effect).
- Uncertainty about **applicable consumer law** provisions - not only an issue of the jurisdiction of the regulator but also which legal framework applies (see Professor Rott's slides).

Comparability issues

- Comparison becomes more complex and it can be **difficult to compare bundles** (prices, quality, etc.). Banking is an example of where the price comparison tool fails.
- Online price **comparison tools** do not (yet) compare bundled offers and contractual conditions.
- **Lessons from airline** business show a trend to unbundle, where it is only possible to compare base fares but not additional services (e.g. luggage sizes and fees differ per company).
- **Lack of price transparency** on how much customers pay for each part of the bundle.
 - Suppliers have an incentive not to make single product elements available.
 - The **law does not require information on the prices of the individual parts of the bundle** (extensive German case law).
 - The **law does not require the trader to offer the individual parts of the bundle separately**.

Redress for bundled products complaints

- Many sectoral regulators (e.g. Belgian energy ombudsman, Belgian telecoms regulator) have **no remit to deal with bundled products complaints**. This regulatory gap is illustrated from the consumer perspective in a case study published by BEUC ([see Consumer Champion case 1](#)), regarding an energy retailer selling insurance.
- To whom should consumers complain? Need to **avoid regulator and ombudsman jurisdictional ping-pong**.

4. PEER Bundled Products Regulatory Roundtable – outcomes

This PEER event was a rare opportunity for different regulators to meet and deepen our collective understanding of the opportunities and risks of bundled products, where the jurisdiction of regulators in different sectors is less clear and cooperation becomes more important.

Thanks to this PEER event, we discovered:

- (a) **Case studies** of bundled product challenges and solutions
- (b) A practical example of **guidelines to the industry for bundled products**
- (c) **Good cooperation among sectoral regulators** in some countries

Also of interest were insights into processes that regulators underwent to find solutions and/or to develop guidelines. This involved **good cooperation between the relevant enforcers** (e.g. sectoral regulator and consumer protection authority). These experiences can serve as useful good practices for other authorities as new challenges arise in the future.

5. Lessons for Regulators dealing with bundled product cases

PEER events (and onward sharing of the lessons) allow regulators from different sectors to access case studies that can help enforce consumers rights. These resources and experiences can be helpful as new consumer cases arise.

Let's learn together – share with us your experiences and solutions you have developed.

Your case studies play a key role in sharing forward experience with fellow regulators/consumer law enforcers. If you have experience in resolving a particular bundled product issue, please share your tips and solutions with PEER. Contact una.shortall@ceer.eu

PEER Case 1- Regulatory Guidelines on bundled products developed by ERSE (Portugal) following electricity disconnection due to non-payment of equipment maintenance services

To date, the Portuguese energy regulator (ERSE) has received 170 queries and complaints on bundled or additional service contracts available in Portugal. BEUC has published some examples of Portuguese consumer cases on its website. The major problems reported are sales method, lack of information and a lack of transparency on price and comparison. One case is outlined below for illustrative purposes. Further information (case summary and ERSE recommendation) is on the PEER platform on www.ceer.eu.

The case in brief

As part of her energy supply contract, a Portuguese consumer contracted a service with his energy retailer for maintenance services of appliances. After a 6-month trial period, the consumer terminated the maintenance agreement element of the contract.

The problem

- The supplier found an error in the bill of the service provided during the six previous months and issued a new bill for €23.70. The consumer did not pay and following notification from the company, electricity was disconnected.
- This is contrary to Portuguese law which allows an interruption only in the **case of non-payment of energy bills, whenever these bills are related to energy supply**, once certain criteria are verified. In other words, even if the equipment maintenance service is invoiced in the same bill as the energy supply, the supplier cannot interrupt the energy supply due to non-payment of the equipment maintenance service. Although this is clear according to the law, the company still decided to cut the energy supply.

The solutions and other steps taken by the regulatory to protect consumers

- ERSE fined the supply company €20,000 for cutting energy supply due to non-payment of a maintenance service contract.
- ERSE developed (in 2017) a **Regulatory Recommendation for all energy suppliers concerning bundled or additional service contracts**. It requires *inter alia* the supplier to provide clear information on the separation between essential services and additional services and to guarantee that switching energy supplier does not incur additional costs either to maintain or cancel such additional services.
- Since 2016, ERSE requests a copy of **all contractual conditions** concerning bundled or additional service contracts.
- A standard form for pre-contractual information **obliges suppliers to identify bundled or additional service contracts**.
- A revision to the national commercial relations code revision will include a **requirement for regular reporting to the energy regulator** (ERSE) on bundled or additional service contracts.

PEER Case 2- Regulatory Guidelines on information provision in the energy market developed by ACM (The Netherlands)

The problem

ACM (the Dutch multi-sectoral regulator) found, through random checks, that the level of the energy companies' compliance with the requirements on the provision of information was insufficient. ACM discovered that companies understood energy law but not general consumer law.

The solutions and other steps taken by the regulatory to protect consumers

- In an effort to increase compliance of general consumer rules in the energy sector, **ACM developed guidelines that translate the general consumer protection rules to the practices in the energy sector**. The guidelines explain the rules clearly and simply.
- Several **lessons** were learnt by the regulator.
 - o In terms of developing guidelines, a key lesson is that **general consumer legislation should act as a firm basis as it applies across all sectors**. Sector-specific rules can complement but must be consistent with consumer rules.
 - o As part of the process, ACM **consulted** the energy sector on its guidance document.
 - o As the guidance was to be followed by enforcement actions, ACM provided a **grace period for companies to comply** with the rules.
 - o ACM learnt that guidance is very important and furthermore **guidelines or rules provide a firm basis for enforcement** (which became much more effective).

6. PEER's (possible) guiding principles for bundled products – work in progress

During the course of the PEER event discussion, a number of guiding principles emerged that could govern how companies and regulators treat bundled products. Below is a selection of some initial thoughts drawn from the discussions during the event (not agreed by participants).

1. **Simplicity.** Consumers need easy to understand, easy to compare and consistent information. In terms of consistency, the definitions in the contract, offer and bill should be the same.
2. **Single point of contact.** The consumer should not have to face a multitude of interlocutors for the different elements of the bundled product. Clear information on who is the bundled service provider and complaint handler in the case of bundled products should be mandatory. Even if this provider is acting only as a broker/intermediary for additional services, the customer should have only one interface. This would be supported by relevant back office cooperation between the involved product providers.
3. **Transparency is key.** There must be price transparency on the different elements of the bundled products. This transparency must be reflected in the bill, identifying the other contacting parties and the terms and conditions of the different elements of the bundled product. Bundled services should offer the option of separated payments in order to grant the consumer the choice to pay only for energy consumption, as it is an essential service.
4. **Clear liability principles** in the case of multiple contracts of the bundled products.
5. **Companies must adhere to due diligence** in terms of unfair commercial practices.
6. **Good guidance principles for price comparison tools** should equally apply in the case of bundled products.
7. **Right to information about the contract conditions.** The consumer should be well informed about the contract conditions (e.g. the right to switch out of an element of the bundle and the conditions to end the contract or individual elements of a bundled contract). Suppliers should provide this information upfront and also during the contract when customers ask for it.
8. **No disconnection of essential services** (e.g. energy) in the event of non-payment of another element of the bill of a bundled product.
9. **No dispute resolution fee.** In the case of a dispute on a bundled product, there should be low or no fees for the customer to engage in Alternative Dispute Resolution (this is consistent with the principles of the ADR Directive²).

² Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC).

7. PEER Bundled Products –possible future actions

A number of possible areas for improvement and cross-sectoral cooperation were identified which could be of interest to the European Commission and policy-makers:

- The benefit of mapping, across all EU Member States, the sectoral regulatory authorities, ombudsmen and other authorities consumers can contact if they have a problem with a product or service. This should serve to identify gaps and overlaps. It should also include a list of the relevant EU bodies representing these national bodies so as to help create a comprehensive landscape of the regulatory bodies.
- The need to develop explanatory notes/guidelines on the treatment of bundled products under the Unfair Commercial Practices Directive - Directive 2005/29/EC on Unfair Commercial Practices (COM(2013)138) 14 March 2013.
- The importance of training for sectoral regulators on general consumer law and bundled products (e.g. by the CPC Network of consumer protection authorities or alternatively under the framework of BEUC's EU-funded Consumer Champion programme).
- Raising awareness (e.g. through the EU Consumer Summit) of the need for cross-sectoral collaboration, including reaching out to Consumer Protection Authorities ([Regulation \(EC\) No 2006/2004](#) on consumer protection cooperation, subject since 25 May 2016 to a proposal for reform) to cooperate nationally with sectoral regulators and to Data Protection Authorities to engage them (where appropriate) in PEER.

For its part, PEER plans to pursue the following actions:

- Disseminate the lessons learnt from this first effort of PEER cross-authority cooperation by sharing with participants and posting on the PEER section of the CEER website these PEER event proceedings, as well as the case studies and examples of guidelines from Portugal and the Netherlands.
- Continue PEER on a pilot basis in 2018 with additional PEER events (e.g. on cybersecurity or privacy) and an annual short bulletin "PEER Power" of PEER activities.

Presentations and documents are publicly available on the PEER section of the CEER website (www.ceer.eu). This includes short case studies and regulators' respective solutions. Guidelines developed by regulators are also on the website.