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COMMENTS TO THE ERGEG PUBLIC CONSULTATION ON THE GUIDELINES OF GOOD PRACTICE ON INDICATORS FOR RETAIL MARKET MONITORING

15 June 2010

0. Introduction

On 20 April 2010, the **European Regulator's Group for Electricity and Gas** (ERGEG)[1] launched a public consultation on the proposed Guidelines of Good Practice on Indicators for Retail Market Monitoring.

This document aims to start the discussion on effective monitoring of the retail market, according to the requirements established by the European Commission.

The final document will be a guide with recommendations for the national regulators and for the newly created Agency for the Cooperation of Energy Regulators (ACER), and will be presented on the occasion of the 3rd Citizen's Energy Forum that will be held after the summer of 2010.

This work is a continuation of other reports published by ERGEG[2] in connection with consumer protection and the elimination of barriers to competition.

IBERDROLA with this note assesses the proposed document and includes general comments on monitoring and control of the retail market and specific comments for each of the proposed indicators, so that they can be taken into consideration when preparing the final document.

1. General comments

We welcome the opportunity to consult on the proposed good practice guidelines for retail market monitoring. We consider the ERGEG proposal to be an interesting and appropriate way of determining the degree of deregulation and effective competition of the electricity and gas markets in member countries. We believe that it is important to limit the final recommendations for residential consumers.

The indicators referring to customer satisfaction should be published in aggregate form by country. This will, allow a prudent period of time so that the data from the retailers can be collated and the information from other agents different from the retailer or distributor can be considered as a whole (the case of consumer associations and municipal consumer information offices in Spain, for example).

In general, it is considered that the information should be provided on an annual basis, and always taking into consideration reasonable deadlines so that all the agents can send the

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[1] ERGEG is the instrument used by European regulators to provide advice to the European Commission. CNE and OFGEM represent Spain and the United Kingdom, respectively, at ERGEG.

[2] Reports on the ERGEG Customer Focus Group-Questionnaires on Customer Protection, Customer Switching Process, and Transparency of Energy Prices, Bills and Contracts.

information to the regulator and the latter can publish it on the agreed date. Six-monthly to monthly frequencies could be considered provided that the data collection process is automated in the future.

An agreed precise definition of the indicator is absolutely necessary to ensure consistency in the information provided by all member countries and therefore to ensure that any comparisons or conclusions drawn are reliable. This will also enable the agents to make any required changes to the information systems and the computer processes for obtaining the data needed and calculating the indicators, so that subsequent changes do not give rise to significant development costs.

It is very important for the national regulators to ensure the reliability of the information from its source to the determination of the final indicator and, as recommended by ERGEG, to make a joint evaluation of interrelated indicators. It may be appropriate to ask agents for a declaration that the information is accurate to the best of their knowledge, rather than auditing that could be burdensome.

Finally, but equally important, it would be advisable to require that the results of those indicators be communicated in the first instance to the agents before they are made public, so that they can be reviewed and checked, thus avoiding erroneous or incomplete conclusions.

2. Particular comments

Customer satisfaction indicators

The 3 indicators established in the proposal for measuring customer satisfaction are discussed below. As recommended in our response to the ERGEG consultation on Customer Complaint Handling, Reporting and Classification, it should be at the discretion of each Member State to agree what complaints data is important and relevant in this context. NRAs should be required to consult with service providers as to what information is relevant and useful to avoid a potentially onerous burden being imposed on service providers.

Indicator 1: Number of customer complaints (by type of complaint)

The definition of a complaint as "*any expression of a customer's dissatisfaction*" communicated directly to a supplier (retailer or distributor) or through a third party, and by any means, requires greater definition as regards the distinction between complaints and customer enquiries. Most of the time complaints can be resolved immediately, usually by telephone.

Classification of complaints is another open topic which impacts the customer management and communication systems. ERGEG is completing a guide to good practices on complaint

management[3] which includes a classification of complaints at two levels; we believe that it would be more prudent to start its application at the first level being considered.

We believe that the most appropriate model would be one where the information is provided by all the suppliers to the national regulator, who could also receive complementary information from third parties, such as consumer associations, local and regional bodies (who have strong powers in matters related to consumption in Spain), mediation systems, etc., which could be used for comparison purposes. We believe that the centralisation of information contributes to its homogeneity and speeds up the preparation of the indicators.

We also think that the number of complaints is simply a quantity that on its own only reflects a volume of activity, and that for qualitative assessments it should be expressed in relation to the number of customers in the market in question, with average values for the period being considered. A "number of complaints in the year for every 10,000 customers" type of indicator could be standardised and more appropriate for this purpose.

Indicator 2: Number of customer enquiries (by type of enquiry)

The proposal defines a customer enquiry as "*a request for information*" from the retailer, distributor or any other agent, in any form.

We believe that it will be difficult to obtain the information that is determined, in due time and form, from some agents such as consumer associations or municipal consumer information offices, which on occasions carry out an important task in providing information to the users, particularly when regulatory changes take place which affect residential consumers or certain groups in the mass or "general public" market.

For this indicator, the comments provided for section above, Complaints indicator, would also apply. With regards to the level 1 classification, the centralised data collection system and the qualitative assessment should be standardized using "number of enquiries in the year for every 10,000 customers". Additionally, suppliers (service providers) may have a substantial amount of information online, which is designed to inform customers in some member countries. This source can be more convenient for customers to answer queries as opposed to contacting suppliers by phone. The purpose of this metric is to gauge customers' engagement in the market, but without including numbers of customers accessing websites or contacting consumer organisations, this metric will not accurately reflect the number of customers engaging in the market.

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[3] ERGEG´s draft recommendations on customer complaint handling, reporting and classification in the electricity and gas sectors.

 http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CUSTOMERS/Customer%20Complaint%20Handling/CD/E09-CEM-26-03_ComplaintHandling_2009-09-09.pdf

Indicator 3: Is there a website with a reliable price comparison system for the customers?

In our opinion, although the existence of a price comparison system on the Internet is positive contribution for providing better information to the consumers, it is worth noting that the use of the Internet is not yet widespread among consumers within some particular member countries and for this reason this indicator may not be sufficiently relevant to appear in a prominent position.

We propose that it should be eliminated for the purpose of simplifying the collection of indicators.

In Spain the national regulator, CNE, has already a price comparison system on his website for small customers, and some other private websites offer energy price information, not always with the necessary independency an updated figures.

In any case, we believe that an express recommendation should be made for the national regulators to exercise ongoing supervision of the price comparison systems made available to the consumers, in order to guarantee the existence of reliable information and a fair comparison of the offers existing on the market.

Indicators on offers for consumers

The proposal rightly specifies that the indicators in this section will refer exclusively to the residential sector, defining a standard consumer in the member country, although ruling out the standard consumers used in the national information provided every 6 months to EUROSTAT.

Greater disaggregation of the residential sector could be considered in the future through different standard consumers, depending on the different forms of consumption and enabling cross-border comparison.

Contrary to the opinion of ERGEG, we consider that the information on final prices should refer to the total price paid by the end customer, and preferably be quoted exclusive of VAT, since the consumer is sufficiently aware of this tax, which provides no differentiation between agents in the same country.

Direct information from retailers will be required for preparing these indicators, and for this reason it would be advisable for the regulator to establish standardised formats for collecting data on the offers, and to maintain the confidentiality of the information whenever this is required prior to its public use by the retailer.

The frequency for preparing this information should not exceed 2 or 3 times a year in order to limit the total operation costs, since the entire process requires time and effort by all the parties involved, and maintain a reasonable level of market monitoring.

The 5 indicators established in the proposal for monitoring offers to consumers are discussed below.

Indicator 4: Final price for domestic consumers

We consider that this information should be prepared twice a year on fixed dates, for example on 1 January and 1 July every year, in order to avoid scattered periods and enable comparison with EUROSTAT statistical values. However, it may be more appropriate to require suppliers (service providers) to update only if there have been any changes in pricing.

Given the potential scale of offers in some Member States, it would be more appropriate for regulators to present this in an aggregated format for each country, so as to avoid the risk of 'information overload', perhaps on an averaged basis, dependent on consumption or payment method.

Indicator 5: Retail margin

As ERGEG admits, this indicator is difficult to calculate and implement, and in addition in those countries where regulated prices are maintained for most domestic consumers its publication would not make much sense, since the margin would be established by the regulator and would be the same for all the retailers.

We propose that this indicator be eliminated because we do not believe that the results would give an accurate picture of the level of competition. Indeed, this indicator could actually be misleading, due to the difficulties of gaining an accurate picture of margins in more competitive markets, since these will rely heavily on individual hedging strategies. Further assumptions relating to low margins could also be unfounded where there are cross-subsidies with other business areas. Overall, this will not be a useful indicator and the end-user price considered in indicator 4 is a more relevant customer information.

Indicator 6: Price bracket

In the event of its publication this indicator, should be recognised as the annual saving that could be obtained in the total billing of standard domestic consumers. For its effective implementation it would require retailers to regularly communicate the updated offers to the regulator.

The Spanish regulator publishes two or three times in the year, a comparative report using data from the suppliers websites or general offers from the customer service, that we consider good enough for the equity of market outcomes.

The standardised formats for collecting price data must enable differentiation of the various products and options and conditions included in each offer and must not assume that all products or tariffs have the same characteristics.

We also think that this indicator should be limited to general offers concerning the residential sector, without considering personalized conditions.

Indicator 7: Number of current offers

While a variety of product offerings for customers can be a positive indicator for competition, again we would caution against drawing conclusions based on quantitative data alone.

In order to set this data in context, it would be helpful to also provide qualitative data on the different types of products available. For example, in some member countries such as the UK, various different types of products exist such as fixed price, capped price, or products which are only available online. This variety in product choice indicates innovation in a market developing products to meet consumers changing needs.

Indicator 8: Percentage of the number of customers with regulated prices

We agree with the position expressed by ERGEG in this proposal and in previous documents, that regulated prices represent a market distortion and make it difficult to achieve the goal of protecting the consumers and ensuring their participation in the market. We agree that this indicator is valuable to gauge progress in moving to markets without regulated end-user prices.

Indicators on the market structure

We fully agree with ERGEG's remark that these indicators on the market structure must be considered together with all the other indicators included in the proposal (customer satisfaction/level of offers/retailer switches/distributor services) in order to be able to obtain conclusions regarding effective competition in the markets being considered.

Indicator 9: Number of retailers

We agree that this indicator is useful in indentifying how well a market is functioning, however should be considered in context of the range of other indicators included in the market structure category. Although the NRA has data available to calculate the number of suppliers from the licensing data, it is important to note that this may not necessarily correlate with the number of fully active suppliers in the market. Many companies may have a licence to supply, but are not an active player in the market, therefore we would caution against using this data as an accurate measure. We would recommend a separate data source be maintained to record the active suppliers in the market.

Indicator 10: Retail shares by number of customers and by consumption

We believe that annual preparation of the CR (Concentration Ratio) and HHI (Herfindahl-Hirschman Index) is sufficient

Indicator 11: Brand separation

We think that it is necessary to research beforehand the domestic consumer's degree of knowledge of the different electricity and natural gas supply activities and companies, in

order to detect possible confusion. The results of this research will inform and focus the information campaigns to be carried out by the national regulators and if required the subsequent measurement data to be collected.

In this respect, we propose eliminating this indicator until the aforementioned studies have been completed and their results analysed.

Indicators on the characteristics of the market and the distributor's services

Indicator 12: Number of retailer switches

We agree that this indicator can provide a key measure of an effective retail market, but it is important to note that the results should not be analysed in isolation. By doing this, ERGEG will obtain a view of not only the switching activity within markets but also the customer motivations behind this activity.

It is important to recognise the wide variety of reasons that motivate customers to switch supplier and that this does not always equal an economic benefit. Although, the switching process in some member states may be working well, some customers will not switch supplier as they are happy with aspects such as customer service and have strong brand loyalty.

We agree that customers moving residence should not be included in this indicator as switches or within the total volume of customers, since these are one-off situations that do not really represent a change of retailer, and it can also be difficult to obtain the information on the previous retailer from the customer.

Indicator 13: Number of renegotiated contracts

This indicator seems to refer to a continuation of the previous contract when its terms and conditions are changed on the customer's initiative, and would not include the automatic extensions that might have been established in the original contract between the parties.

We believe that it would be very difficult to determine the origin of the initiation. For example, the supplier may inform the customer in advance of the contract termination date and its possible renewal prior to expiration. If the customer subsequently contacts the supplier at a later date to agree, it would not be clear whose initiative this was. With the inclusion of the other proposed indicators such as volume of retailer switches, we do not believe that this indicator is necessary and therefore should be eliminated.

Indicator 14: Number of supplier switches past the deadline

It is important that the definition behind the 3 week timescale is clearly defined and ERGRG recognise that customers have a specific time period by which they can cancel their contract, which is essential for customer protection. In addition to the cooling off periods, there will

be other consumer protections that must also be satisfied before the switching process can commence. For example, in the UK, the supply licences require suppliers to contact customers following a doorstep sale within 14 days of the date of the sale, in order to confirm that the customer is happy to proceed with the sale. If the customer indicates that they are not happy to proceed with the sale, the supplier must cancel the application. Therefore, suppliers must allow up to a 14 day window for a customer to cancel the sale in accordance with the supply licence.

The 14 day window therefore allows for the processing of applications, the sending of the relevant information to the customer and the customer's statutory cooling off period, which equates to 14 days. This also allows for the contact with the customer in accordance with the supply licences.

It is important that the 14-day window is excluded from the 3 week timescale when calculating whether the transfer has past the deadline. In addition, we believe that this could be expressed better as a percentage of the total number of retailer switches managed in the relevant period, as in indicator 12.

Indicator 15: Number of cancellations in relation to the total number of switches requested

It should be made clear that the indicator is a percentage of the total number of retailer switches managed during the relevant period, so that it can be assessed together with indicators 12 and 14. Moreover, we are happy that ERGEG has recognised that a failure to switch can occur for a number of different reasons, both on the part of supplier and customer. It is important that this is taken into account when analysing the results.

Indicator 16: Average connection time

The unit of measurement should be specified as "working days", in order to avoid erroneous interpretations. We would also ask that ERGEG recognise that any outliers in the volume will skew the average.

Indicator 17: Average trouble shooting time

This indicator is very difficult to prepare and it should be defined in greater detail in order to avoid a possible lack of homogeneity in the data to be used. Its publication could be delayed until more homogeneous indicators are available in line with the work carried out by the Council of European Energy Regulators (CEER) in its 4th Benchmarking Report on Quality of Electricity Supply, available on www.energy-regulators.eu.

Should it be maintained, the unit of measurement could be "hours".

Indicator 18: Relative number of cuts

We agree with ERGEG's suggestions for its implementation and are pleased that ERGEG recognise the number of different reasons that can cause a supply to be disconnected.

Indicator 19: Maintenance services (average execution time and cost)

A distinction should be made between gas and electricity.