

# Position Statement

on the

## **ERGEG Consultation Paper "Draft Guidelines of Good Practice on Indicators for Retail Market Monitoring" (E09-RMF-14-04)**

Berlin, 16 June 2010

## 1. Introduction

The German Association of Energy and Water Industries (Bundesverband der deutschen Energie- und Wasserwirtschaft - BDEW) endorses the activities required in the third Internal Energy Market Package concerning the further development of competition in retail markets for energy consumers in Europe. Likewise, BDEW supports the collection of different indicators for an assessment of the market development because a mere focus on switching rates and end-user prices is not suited to lead to valid findings on the strength of competition.

In Germany, a large number of competitors offer their energy products both in the electricity and gas retail market. The following number of electricity and gas suppliers is available to customers in the different post-code areas (Source: GET AG, May 2010):

	<u>Electricity</u>	<u>Gas</u>
On an average	85	22
maximum	116	44
minimum	17	5

The large number of suppliers in Germany shows that competition in the retail market is functioning well and that energy supply companies are playing an active role in this competition. Many small and medium-sized companies of the energy industry offer products outside their supply area as well as various products tailored to the particular needs of the respective customer groups. Especially these small and medium-sized companies are an important factor for well-functioning competition. As their resources are however limited, it is very important to restrict the collection and documentation efforts to an absolutely necessary minimum.

Basically, it has to be noted that especially the development of new products (time-of-day or load-dependent tariffs, tariffs promoting energy saving and products in relation with „smart technologies“, etc.) will make the assessment of the competitive situation on the basis of detailed product analyses and pricing increasingly difficult. As a result, an appropriate comparison of competitors is rendered more difficult. Complex surveys taking account of this development lead, however, to a distinct increase in administrative and collection efforts and are not conducive to the aim of lean corporate and administrative structures. In particular, it is not reasonable to establish any reporting obligations going beyond the third Internal Energy

Market Package; ideally, only those data should be collected which are analysed in any case by competing companies (cf. detailed remarks).

Therefore, it is essential to maintain a sense of proportion and make the survey simple but nevertheless as significant as possible, on the one hand, and assess the results in relation to the complexity of circumstances, on the other hand. A corresponding limitation in terms of indicators seems to be necessary also for the reason of a clear delimitation of responsibilities between national regulatory authorities and the Cartel Office.

The transmission of market data to the regulatory authority is problematic - at least from the German point of view (regulatory authorities are exclusively responsible for network operation). Data collection by the regulatory authorities and, where applicable, the publication of these data must comply with the relevant statutory provisions and be carried out with a sense of proportion in terms of extent and contents, and must not lead to any distortions of competition. Moreover, the benefits obtained from the data requested should be in due proportion to the associated administrative costs. In this context, we would like to mention the German federal government's initiative for a reduction of administrative burdens which aims at a decrease but in no case at a further increase of data supply obligations.

The distribution of responsibilities in every Member State should be taken into consideration. According to Article 37, paragraph 2 of the Electricity Directive and Article 41, paragraph 2 of the Gas Directive, these monitoring duties may be carried out by other authorities than the regulatory authority. In Germany, control of the liberalised wholesale and retail markets is the cartel authorities' duty. Regulatory authorities, on the other hand, are only responsible for the regulated sector. This division should be retained.

In order to avoid an additional or non-harmonised and thus inconsistent data collection or delivery, BDEW considers it essential that the data collection carried out in the framework of the EU Commission's recommendations and in the framework of the planned „Guidelines of Good Practice for Retail Market Monitoring for NRAs and the Agency“ will be coordinated and harmonised with the data collection carried out as part of the national surveys for the monitoring reports of regulatory authorities. Enquiries/indicators already introduced at the national level should be further used or be only adjusted instead of introducing numerous new indicators without coordination with existing indicators. This applies both to the contents and the timeframe of data enquiries or collections, because every change in data enquiries entails an adjustment of the relevant IT systems or a new modelling of evaluation which leads to increased data collection efforts.

## 2. List of questions

The comments on the Consultation Paper are to be based on the following questions:

- B:** Which of the indicators described should be left out of the final ERGEG recommendation on retail market monitoring?
- C:** Are there any indicators which should be added?
- D:** Are there any indicators which should be measured differently?
- E:** Are the suggested frequencies for data collection appropriate and feasible in the light of national circumstances, among other things?
- F:** Is there any indicator for which the results should be published in an un-aggregated form, thus naming the individual energy company?

## 3. General remarks on the questions (for details see comments on the different indicators)

### Question B

*Which of the indicators described should be left out of the final ERGEG recommendation on retail market monitoring?*

The following indicators should not be collected (the reasons are given in the comments on the different indicators):

- Indicator 5 (Retail margin)
- Indicator 10 (Market concentration)
- Indicator 11 (Branding)
- Indicator 14 (Delay in switching process)
- Indicator 15 (Failure to fulfil the switch)
- Indicator 16 (Connections)
- Combination of indicators 17 (Time until repair) and 19 (Maintenance services)

### Question C

*Are there any indicators which should be added?*

No. The represented indicators (except for the indicators mentioned under question B) when considered in their entirety can provide a good survey of the development of retail markets in Europe (reasons are given in the comments on the different indicators).

#### **Question D**

*Are there any indicators which should be measured differently?*

BDEW considers that the aspects of „Customer satisfaction“ mentioned in Section 4 cannot be sufficiently inferred from the indicators 1 to 3 mentioned there. Customer satisfaction is rather a global parameter which would have to be determined in a different way, e.g. centrally by means of direct customer surveys. After all, customers addressing a subject for clarification (e.g. error on the bill) may basically be satisfied with their supplier, especially if the inquiry/complaint is swiftly and competently handled. Instead of indicators 1 to 3 (quantitative survey) one single qualitatively measured indicator (sample analysis or something else) should be introduced to measure the general customer satisfaction directly.

#### **Question E**

*Are the suggested frequencies for data collection appropriate and feasible in the light of national circumstances, among other things?*

An annual data collection seems to be appropriate in all cases. Quarterly data collections, as suggested for indicators 4, 12, 14 and 15, are not practicable. Moreover, market changes can only be identified over an extended period of time. Besides, quarterly surveys lead to an unjustified administrative and cost burden for the market participant questioned.

Furthermore, it is necessary to avoid an additional or non-harmonised data collection and delivery. The data collection carried out in the framework of the EU Commission's recommendations and in the framework of the planned „Guidelines of Good Practice for Retail Market Monitoring for NRAs and the Agency“ must be coordinated and harmonised with the data collection already established as part of the national surveys for the monitoring reports of regulatory authorities (as to question E, cf. also detailed comments on the different indicators).

#### **Question F**

*Are there any indicator for which the results should be published in an un-aggregated form, thus naming the individual energy company?*

No, because all cases affecting distribution companies imply sensitive market information that must be anonymised and protected in any case.

## **Comments on the different indicators:**

### **4. Customer Satisfaction**

#### 4.1 Customer complaints / 4.2 Customer enquiries

*Indicator 1: Number of customer complaints by category*

*Indicator 2: Number of customer enquiries by category*

Indicators 1 and 2 are vaguely defined as they refer to any contact the customer established with the energy company. Furthermore, it may happen that complaints cannot be clearly assigned to the network operator's and the supplier's market roles. Indicators need to be closely matched in a clear-cut manner with the national complaint management systems.

According to previous experience, end-user complaints are partly attributable to a lack of knowledge of the system. Therefore, a distinction between customer complaint and customer enquiry (need for clarification) is extremely difficult. Besides, there are many „third way“ customer enquiries, i.e. that they are not addressed to service centres but also through direct customer contacts, e.g. by enquiries to staff members outside the customer service centres, etc. If an energy company must record every customer contact there will be a data explosion and the risk of excessive administrative burdens.

The collection and documentation of data on customer complaints and customer enquiries by 14 categories and 29 sub-categories (not all of the sub-categories mentioned here are relevant in Germany, e.g. social tariffs) involve an additional effort for the companies, particularly for small and medium-sized companies, which should not be underestimated.

Furthermore, it is to be noted that the suggested collection and categorisation of complaints and particularly enquiries of any form specified according to the month in which they were received imply an immense effort and lead to considerable investments in the IT systems required for that purpose. The reason given by ERGEG for monthly collections (identification of correlations with market events) is not comprehensible when looking at the EU Internal Market as a whole. It is unclear which events could lead to an EU wide increase in the number of customer enquiries and complaints. Besides, we believe that monthly fluctuations are very unlikely. Possible exemptions do not justify the enormous collection effort. Therefore, data should be collected on an annual basis to reduce complexity.

As according to ERGEG complaints are or will be differently classified on a national basis, the indicator is not suited for a Europe-wide comparative analysis of retail markets. According to

the recommendations of the EU Commission on the introduction of an EU-wide method for classifying and reporting of customer complaints, the number of complaints by categories should already be collected. Attention is to be paid to avoiding data doubling. If data collection is already carried out in the framework of the EU Commission's recommendations, we consider it necessary to check a data collection on customer complaints according to the classification of the ERGEG Guidelines particularly carefully in terms of duplications. In the framework of the EU classification, a collection is also carried out by product categories. If a collection of equal data would be additionally carried out by the number of customer complaints and categories due to the ERGEG-Guidelines this would give rise to an additional workload. This would apply all the more if the data collection was carried out by different institutions and at different times.

**Proposal:**

1. Collection of data from the companies in 14 categories at the most. Subcategories are only collected for complaints to the central arbitration body (according to third Internal Market Package).
2. Collection of market data along the lines of Unbundling through an independent institution.
3. Collection of data in an aggregated form (not retraceable).
4. Limitation of customer enquiries to be collected to enquiries with defined relevance (e.g. from advisory service duration x).
5. Collection of data with only one system which excludes a duplication of data collection.

#### 4.3 Customer information

*Indicator 3: Is there a reliable price comparison website available for customers?*

**No comments**

### **5. Retail Market Outcomes**

#### 5.1 End-user prices

*Indicator 4: End-user price for typical household customer*

Prepayment systems are not common practice in Germany; thus, an additional collection is unnecessary.

Basically, price components should be separately collected (retail price, network charges, taxes and levies) with a view to enabling end-user prices to be compared at regional and European level. Due to very different tariffs and products (partly associated with additional services) the validity of average values is limited. Though a quarterly survey would improve the topicality/comparability of data (equalisation of the different price adjustment periods of companies), it is not expedient because of the high work load involved and the limited validity of data. Furthermore, account has to be taken of the fact that these data are already collected (e.g. by Eurostat). It has to be avoided in any case that data are collected at national and European level on the basis of disparate classifications.

#### 5.2 Retail margin

*Indicator 5: Retail margin for typical household customer*

It is not possible to obtain usable findings about the purchase strategy of companies from the difference between average end-user prices (retail part) and exchange prices. Moreover, complex products (in connection with efficiency services and/or smart technologies) cannot be represented. According to the provisions of the Energy Services Directive and of the third Internal Energy Market Package, the share of these “smart” products will increase. When using this approach, products for which the customers have to pay a higher price for „their“ energy but which lead to reduced energy consumption, would result in a „rising“ margin. Statements on the strength of competition (i.e. that „low margin“ means „strong competition“) cannot be derived in this way.

The procurement strategies of the different companies (e.g. share of short-term procurement in the spot market vs. share of long-term procurement in the futures market, composition of



portfolio, etc.) are extremely disparate. Due to this fact, it is almost impossible to determine a time-related correlating exchange price and thus obtain valid data.

Beyond that, there must not be any responsibility of the regulatory authority to enquire individual retail margins. Such a responsibility is not foreseen in the third Internal Market Package, and also goes too far as the relevant information constitutes operational and business secrets. In Germany, even the Federal Cartel Office can request the disclosure of this kind of data only in exceptional cases if it addresses a concrete request for information to a company.

**Conclusion: This indicator should be deleted.**

### 5.3 Price spread

#### *Indicator 6: Price spread on comparable products for typical household customers*

Basically, price components should be separately collected (retail price, network charges, taxes and levies) with a view to enabling products to be compared at regional and European level.

The „comparable price“ classification is very complicated. Clear-cut definitions exist only for basic supply for which the statutory provisions of the Basic Supply Ordinance apply in Germany. For instance, the terms „eco-tariffs“ or „energy saving tariffs“ are not protected so that a combination into one product group is very difficult.

The comparison of the price spread on one „product group“ enables only few conclusions to be drawn on the incentive for a tariff switch, as there are also switches between „product groups“ (e.g. from basic supply to tariffs for special-contract customers).

Apart from basic supply, energy companies in Germany offer a wide range of products which make a comparison already difficult today.

Example: Tariffs against cash in advance (no pre-payment as mentioned in Section 5 of the ERGEG Paper) are comparatively low, but they can only be compared by means of more complex surveys to a tariff with a bonus payment after expiry of a predetermined period. It is also hardly possible to make comparisons for products with a price guarantee based on different times of commencement and periods of delivery.

Basically, the statements made under sections 5.2 and 5.1 apply here as well.

**Proposal:**

Strongly abstracted data collection involving a work load which corresponds to the gain in findings.

5.4 Diversity of contracts (offers)

*Indicator 7: Number of current offers to typical household customers*

In Germany, the Internet portal [www.verivox.de](http://www.verivox.de) provides a good overview of existing energy suppliers and possible contract options, including payment variants (price fixing, cash in advance, etc.) which provide a comprehensive survey to customers and regulatory authorities of available suppliers and offers. According to the German Energy Industry Act, energy suppliers have a duty to give notice to the Federal Network Agency which keeps a list of energy suppliers working in Germany. The notification duty relates to the supply to household customers in electricity and gas. The notification duty exists regardless of whether electricity is supplied from conventional energy sources (gas, coal, etc.), from renewable energy sources according to the Renewable Energy Sources Act (EEG) or from a cogeneration plant.

Therefore, through its own list of providers and existing Internet portals, the Federal Network Agency as regulatory authority has the relevant information available to obtain a conclusive survey of the energy companies working in the German market.

BDEW thus considers that this indicator is appropriate to provide a picture of the existing competition in the German energy market.

5.5 Regulated end-user prices

*Indicator 8: Percentage of customers eligible to receive a regulated end-user price and percentage of customers served under regulated end-user prices*

In Germany, rules concerning vulnerable and socially disadvantaged customers are part of social legislation. Aid provided in terms of energy supply is part of the welfare system. Therefore, it is to be noted that this aspect, i.e. distinction between competitive market and welfare system, is taken into consideration, and that it is made clear that the requirements resulting from the third Internal Market Package and from social welfare are satisfied in Germany without any regulatory interference in the market.

Nevertheless, the introduction of this indicator is welcomed as it transparently represents in a European context the regulated market share that should be reduced in the long run. The aid granted to low-income households should not be used to justify the regulation of the household customer area and socialise welfare duties of the state to energy consumers at large.

## **6. Market structure**

### 6.1 Number of suppliers

*Indicator 9: Number of active suppliers selling electricity and/or gas to household customers across the same market*

**No comments**

### 6.2 Market concentration

*Indicator 10: Market shares by number of customers and consumption*

The collection of data on market concentration by the regulatory authority is at least from the German point of view problematic (regulatory authorities are exclusively responsible for network operation). Data collection by regulatory authorities and, where necessary, the publication of these data must be carried out with a sense of proportion in terms of scope and contents, and must not lead to any distortions of competition. Basically, it is the duty of cartel authorities to monitor market functioning (see also general remark in the “Introduction”). Data collections by public authorities and, where applicable, their publication must therefore be carried out with a sense of proportion in terms of scope and contents and must not lead to distortions of competition.

**Conclusion: Due to the high data sensitivity, the determination of this indicator should be foregone.**

### 6.3 Branding

*Indicator 11: What percentage of household customers is served by a DSO that*

- *has separate branding from the supply branch of its vertically integrated undertaking*

- *does not have separate branding from the supply branch of its vertically integrated undertaking*
- *is totally separate from the supplier of that customer?*

The Indicator should be deleted as it is not clear why a separate branding should be indicative of growing competition. According to the Electricity and Gas Directives, DSOs must ensure that their external appearance does not lead to confusion with regard to the supply branch's own identity. In Member States where separate DSO branding has been opted for, there is not automatically increased competition. Moreover, the Guidelines generally speak of communication and branding activities. To derive from that an imperative ban on the use of a common logo goes far beyond the contents of the Guidelines. On the basis of Article 26, paragraph 3 of the Electricity and Gas Directive, the affiliation of network and sales activities to a corporate group in a vertically integrated company is still possible; thus, it must also be possible to show this to a certain extent by the external appearance.

Moreover, the wording is misleading because customers are not served by the distribution system operator but by the suppliers working in the relevant network area. Network operators are required to grant network access in a non-discriminatory manner to all suppliers working in their network area. Besides, the statements on indicator 10 likewise apply to market shares of household customers at DSOs.

**Conclusion: We consider that this Indicator is not expedient and should therefore be deleted. In any case, the second paragraph under 6.3 "Branding" (p. 33) must be correspondingly adjusted.**

## **7. Market condition and DSO services (network service)**

### 7.1 Switching rates

*Indicator 12: Number of switches for household customers as a percentage of customer numbers*

These data are currently already collected as part of the annual monitoring enquiry. However, the positioning of this indicator under point 7 is to be challenged. It is true that the data are collected by the distribution system operator, but it would be more logical to mention them under point „5 Retail Market Outcomes" as they relate exclusively to the retail market.

Annual data collection is sufficient and reduces the workload on companies and administration. In any case, it must be avoided that data enquiries at national and European level are carried out double as separate data enquiries.

In principle, particular attention should be paid to the „switching rate“ indicator as it cannot be concluded per se that the retail market due to a lack of sufficiently high numbers of switching (switching here refers to a classical switch of supplier from supplier A to supplier B and not to a switch of tariff at supplier A) is insufficiently developed. Current studies show that, on an average, customers are frequently very satisfied with their „old, usually local provider“. The existence of other providers offering various tariffs allows us to conclude that a market exists and that hence the retail market is working.

### 7.2 Renegotiations (Renegotiation of the contract with the same supplier)

#### *Indicator 13: Number of renegotiated contracts*

The renegotiation of individual contract elements between household customers and supplier is rather unusual in mass customer business. Frequently, there is a switch of tariff at a supplier. It is recommended to collect this indicator like switching rates, i.e. the number of tariff switches related to all household customers.

Concerning indicators for monitoring the development of the retail market, account has to be taken of the fact that DSOs have only data about the supplier but no information about the commercial aspects of the delivery available. This applies in particular to the indicator 7.2 "Renegotiation". Consequently, distribution system operators cannot collect this kind of data.

### 7.3 Delays in switching process

#### *Indicator 14: Number of delayed switches*

This Indicator hardly enables any conclusions to be drawn with regard to the ERGEG objectives concerning “level and effectiveness of market opening and competition”.

In Germany, the Federal Network Agency has defined standard compulsory business processes to be applied by all market roles for the implementation of supplier switching.

Delays in the customer switching process may have various reasons. Also customers themselves may cause the delay in switching, e.g. by providing data or designating authorised persons to the new supplier which differ from those specified to the previous

supplier. Furthermore, it has to be emphasised that failure to fulfil the switch cannot be brought about by the DSO.

For reasons of data reduction, it is not advisable to take account of this fact by a single indicator, all the more since it is also indirectly enquired under the item „customer complaints“. Should customer complaints about a delay in switching processes increase in number, it can be assumed that there is a problem regarding the implementation of switching processes.

Besides, a collection of relevant data is difficult. A network operator may determine the number of rejected switches; as a result, a switching process which was delayed several times would also be repeatedly recorded. On the other hand, it is very difficult to determine the concrete length of a delay as switching requests for the same process may be rejected for different reasons.

**Conclusion: The collection of data for this indicator should be foregone.**

#### 7.4 Failure to fulfil the switch

*Indicator 15: Number of failures in relation to the total switching rate*

Also in the event of failure to fulfil a switch, it must be assumed that such cases rank as complaints under the classification of indicator 1. An additional data collection for recording of the reasons of a failure to fulfil the switch within the mentioned categories would involve a considerable documentation workload. For that reason, data should only be collected on an annual basis. An annual collection of data is sufficient and helps to reduce the burden on companies and in administrative terms without providing an additional gain in findings in excess of the collection under indicator 1. Besides, the distribution system operator cannot collect any data on the categories „debts above a certain threshold“, „transfer being in error“ and „customer being in breach of contract“ as they are outside its sphere of responsibility (cf. comments on indicator 13).

**Conclusion: The collection of this indicator should be foregone as corresponding information is already indirectly collected under indicator 1.**

## 7.5 Connections

*Indicator 16: Average time between a connection being requested by a customer and completed*

Basically, the local conditions, particularly for gas connections, have to be taken into consideration here. Should this data be collected, it is advisable to collect them for defined standard cases only. Connection owners and end-users (final customers) represent two different market roles which do not show a great deal of overlap. The collection of data concerning the "time to complete the connection " is not expedient as network connections are usually requested a long time in advance and are then constructed at an agreed deadline (or over an agreed period of time). If there are any complaints, these are addressed again to the central entity (see indicator 1).

**Conclusion: Indicator 16 should be deleted.**

Moreover, concerning indicators 16 to 18, it has to be pointed out that they relate to issues of technical supply quality which are already taken into consideration in the context of quality regulation. Thus, an additional determination is not necessary.

## 7.6 Repairs

*Indicator 17: Average time until repair*

Attention must be paid to the fact that a collection of the times of beginning and termination of every repair involves a high workload. Therefore, it is advisable to combine this indicator with indicator 19 while enquiries on maintenance/repair times should be limited to an average value per company and damage category.

**Conclusion: Combination of indicators 17 and 19 and enquiry of data at a high level of abstraction.**

## 7.7 Disconnection rates

*Indicator 18: Number of connection points / total number of disconnections*

It has to be pointed out that these data are already collected in the framework of the Federal Network Agency's annual monitoring. In order to avoid additional administrative burdens, the already existing annual notifications of network operators on supply interruptions should be evaluated.

## 7.8 Maintenance services

*Indicator 19:*

- *Is there a charge for execution of maintenance services?  
(Yes/No)*
- *Average time taken for execution of maintenance services*
- *Average charge for execution of maintenance services*

A precise distinction between repair (after interruption) and maintenance (at regular intervals) cannot be recognised in the description of this indicator. Repair times are already collected under indicator 17. It is thus advisable to render the description more concretely and to collect only maintenance fees and maintenance intervals or – if only reference is made to maintenance services after interruptions – to weave this indicator (as it is already dealt with under 7.6).

**Conclusion: Combination of indicators 17 and 19 and collection of data at a high level of abstraction.**

### **Contact person:**

Peter Krümmel  
phone: +49 30 300199-1360  
peter.kruemmel@bdew.de