

bne-position-paper regarding:

ERGEG-Public Consultation Paper on Draft Guidelines of Good Practice on Indicators for Retail Market Monitoring [Ref: E09-RMF-14-04]

The bne very much appreciates the ERGEG-initiative to define indicators for the measurement of the level of competition in EU energy retail markets. The systematic analysis of energy markets with respect to the intensity of competition is an essential element in the still necessary efforts to strengthen competition in European energy markets.

Stemming from our experiences in the German market, our opinion is that for the suggested indicators to be part of this effort, some amendments are necessary. These amendments are meant to help the suggested set of indicators measure reliably retail market competition. Additionally, the collection of the data must not mean excessive additional costs to the suppliers.

1. The large number of small DSOs in Germany restrains competition in ways not being picked up by the suggested indicators

Especially in the German energy market the existence of a large number of mostly very small DSOs is a significant restraint to competition. It boosts the transaction costs of gas and electricity suppliers which are forced to close hundreds of mostly very small contracts in order to be able to deliver to all potential customers. It also leads to strongly varying levels of association among suppliers and DSOs which is contrary to the principle of equal opportunity.

In addition, this piecemeal-structure has, in combination with the current legal situation, concrete consequences for unbundling issues. Companies falling, due to their limited size, under the de-minimis-clauses of German energy law (par. 7 sect. 2 and par. 8 sect. 6 Energy Industry Act) are exempted from more ambitious unbundling rules. What was initially intended to be an exception by law is in fact the rule: 91% of the electricity- and 96% of the gas-DSOs fall under this clause and are thus only inadequately unbundled. Now, unbundling is a key element in strengthening competition in European energy markets. It is well known that its substantial restriction harms the goals set by the Third Package. In our opinion, this restriction is not sufficiently being picked up by the suggested *Indicator 11: Branding*.

In the context of unbundling another issue will grow in importance. It concerns legal provi-

sions for both competitive and regulated metering in Germany. Vertically integrated companies can deliver specific meters, socialize the costs through the regulatory system and offer tailored products to their network customers and their former monopoly customers. This creates a lock-in-effect that is both a limit to competition and an instrument not available to new and non-integrated suppliers whose potential customers are distributed over a large number of networks. Thus, new suppliers are being discriminated against in the future market for energy efficiency and smart metering.

In our opinion, the ERGEG-consulation-paper's indicators concerning *market structure* as well as the remaining indicators do not sufficiently measure these restrictions to competition. We suggest the yearly collection of necessary data and compilation of the following indicators:

- Indicator 1: Fragmentation of DSOs
Average number of connections over the smallest 25%, the smallest 50%, the smallest 75% of all DSOs and the average number of connections over all DSOs
- Indicator 2: Insufficient unbundling
Percentage of DSOs exempted from ownership and functional unbundling
- Indicator 3: Competition in the metering-market
Number of metering-suppliers per network area

The suggested additional indicators are not to be interpreted in isolation but alongside the indicators defined by ERGEG.

2. The collection of data necessary for the compilation of the indicators must not lead to excessive costs for suppliers

The necessary efforts to be made by the companies in the course of data collection must be limited to save unnecessary costs – otherwise additional entry-barriers to the market would arise. Also, these costs would be unevenly distributed: While integrated companies are at least partly reimbursed through the regulatory system, this is not the case for suppliers.

For these reasons, the number and the extent of inquiries must be limited as much as possible. In addition, double reporting is to be avoided: The data requests bei ERGEG and the NRAs (for their own monitoring-purposes) need to be harmonised in every respect (i.e. reporting time, frequency, format, definitions).

Berlin, 16th June 2010