

STATEMENT

provided by the German Association of Local Utilities (VKU in the following) on the

ERGEG Public Consultation Paper on Draft Guidelines of Good Practice on Indicators for Retail Market Monitoring

Berlin, 10. June 2010

The VKU represents 1,370 local utilities in the areas of energy, water and waste disposal. In the end-user segment they have a share of 54% in electricity, of 51,4% in natural gas, of 53,6% in provision of heating and of 77,5% in the provision of drinking water. The wide range of services provided by local utility companies are reliable, environmentally compatible and affordable for the consumer. They make a significant contribution to regional economic development. With over 240,000 employees the individual segments together generated revenue in excess of 90 billion euro in 2008. Investments amounted to 8 million euro. The majority of these investments took the form of contracts placed with companies located in the region.

General remarks:

The VKU welcomes public consultation on the subject of retail marketing monitoring by the ERGEG and expresses its thanks for the opportunity to be a participant.

The VKU unreservedly supports the goal of the ERGEG of creating a suitable competition framework. In this connection, the standardisation of monitoring being actively pursued by the ERGEG by way of this guiding principle is fundamentally endorsed.

However, when guiding principles are drawn up, it should be borne in mind that the legitimate goal of a supportive framework may not be ousted by regulation of areas of competition. Regulation of the end-customer market should be avoided.

Reporting obligations that exceed the scope of the third internal market package should not be created on any account as is envisaged in the case of some of the indicators proposed or the form they are to take. There is the risk that introduction of these indicators and the associated additional reporting obligations will further intensify the bureaucracy involved and in consequence competition will decrease.

Development of data collection and data management always incurs costs. For this reason, the necessity and sense of the proposed indicators are to be scrutinised to ensure that the requested data is always commensurate to the expenditure incurred on the part of the responsee.

In addition, content homogeneity of the data collected on a yearly basis is to be ensured as a matter of priority. The reason being that each change in data enquiry is associated with adjustment of the electric systems or remodelling of the evaluation environment, which results in higher data collection costs. In order to avoid double or unharmonised data collection, we consider it to be a matter of necessity that the data collection is coordinated and harmonised. (see answer to consultation question “Do the proposals of the ERGEG constitute a comprehensive method of evaluating the development of the market?”).

At all events, it must be ensured that any publication of the confidential data collected takes place in an anonymous and cumulative form and so that no conclusions regarding individual companies are possible: Reasons for this include preservation of business secrets and avoidance of competition disadvantages.

Consultation questions

It is at the discretion of consultation participants to comment or not on any aspect of the consultation paper. In addition the ERGEG has requested a reply to the following questions:

- Do the proposals of the ERGEG constitute a comprehensive method of evaluating the development of the market?

From the point of view of the VKU it is seen as a matter of urgency that data collection is coordinated and harmonised within the framework of the recommendations of the EU Commission, within the framework of the proposed “Guidelines of Good Practice for retail market monitoring for NRAs and the Agency” as well as national surveys of the monitoring reports of the regulatory authorities. This applies both to the content and time of the data requested or captured in order to avoid double unharmonised capture/provision of data.

- Are any indicators to be deleted from the recommendations?

Indicator 2;
Indicator 5;
Indicator 11;
Indicator 13;
Indicator 14, as already included in Indicator 1;
Indicator 15, as already included in Indicator 1;
Indicator 16;
Indicator 17, correlates with Indicator 18;
Indicator 19, correlates with Indicator 19

- Are important indicators lacking?

No

- Should indicators be measured differently?
- Are the proposed times for collection of the data feasible given the differing conditions existing in the individual countries?

In order to reduce administrative costs, a yearly data enquiry will suffice for the purpose of evaluating the indicators. Furthermore, recourse is to be made to the sources generally available and to the data already available from enquiries to the regulatory authority, or harmonised with such data.

- Are there indicators in the case of which the results of naming the individual energy supply companies are not to be published in a non-aggregate form?

No

1. Customer Satisfaction

INDICATOR 1:

Number of customer complaints by category

Comment:

A customer complaint is to be taken seriously by the company in question and processed without delay. The risk of losing a dissatisfied customer or generating inordinate costs by handling the complaint further is sufficient reason to deal with the complaint quickly and finally to the satisfaction of the customer.

The VKU has taken part in the consultation procedure re complaint management and argues that it is fundamentally of the opinion that the end-user market is a competitive market and that regulation of a competitive market that at the same time is deregulated is to be seen critically. The view of VKU is expressed in this statement.

It is to be assumed fundamentally that the number of complaints do not automatically allow conclusions as to competition that does or does not work. The existence of a large number of complaints does not necessarily mean that the market has failed. On the contrary this can also be a sign of open communication with customers. For example customer-friendly companies often ask their customers to voice any complaints they have, thereby obtaining comprehensive feedback from their customers and thus being able to implement the ensuing improvement measures more efficiently in customer orientation. This is all the more important as in Germany in particular switching supplier is very easy and presents no problems; the customer being able to choose from a wide range of utility companies and types of contract. We explicitly draw attention to the fact that a low number of customer complaints in connection with a low rate of switch of supplier can also be expression of satisfaction of customers with the supplier they have.

In addition, it should be borne in mind that not every complaint is justified. When the number of complaints is evaluated, the size of the company (number of customers) is also to be taken into consideration.

When Indicator 1 is implemented, it is to be ensured that no double burdens arise if at the same time this brings about implementation of the recommendations of the EU Commission on introduction of an EU-wide method of classifying and reporting customer complaints. If the collection of data already takes place in the context of classification according to the recommendations of the EU Commission, further collection of data regarding customer complaints according to category on the basis of the guidelines of the ERGEG is, from our point of view, superfluous given the high administrative costs this entails. The EU classification also

collects data according to product categories. If, in addition, as a result of the ERGEG guidelines data were now to be collected according to the number of customer complaints and according to category, this would entail additional costs. This would apply all the more so if data were to be captured by different bodies and also at different times. For this reason, the data enquiries need to be harmonised and carried out by one body only in line with the Commission's recommendation. From our perspective, there should only be an annual collection of the data without specification of the month of the complaint, as otherwise it would be a monthly statistic.

Collection of data on customer complaints by the DSO is – at any rate in Germany – not workable. The DSOs have – with the exception of network connections – hardly any contact with customers since, as a rule, the network user relationship only exists between the DSO and the supplier.

INDICATOR 2:

Number of customer enquiries by category

Comment:

It is the opinion of the VKU that this indicator is not a suitable means of depicting competition. Apart from this, the third internal market package does not provide for monitoring of customer enquiries.

If, nonetheless, such an indicator were to be introduced, the remarks re Indicator I apply correspondingly. Here, too, attention is to be paid to harmonisation with the enquiries in the context of the recommendations of the EU Commission on categorisation of customer complaints. Even if it is not a matter of a complaint with regard to the customer enquiries collected, there should be a standardised enquiry by one body.

In addition, what is meant by the term “customer enquiry” should be defined. For example, in some cases customer applications for a household connection are also designated as being a customer enquiry. However, we are of the opinion that in connection with customer enquiries by category only those enquiries are to be collected in the case of which the customer requests information. In our view, the definition of this indicator is not sufficiently precise. The result of this is that the data is interpreted by the companies and bodies in question in different ways and thus can be implemented in different ways, with the result that there could be corresponding distortions in the evaluation of the indicators.

We are also of the opinion that the internet has now become a vital information channel. Portals already in existence are in particular a means for customers to compare the various service providers and form a good idea of the various services on offer and what they cost. The time it would take the individual customer to obtain such information from each supplier is far too great.

This indicator is not of necessity a suitable means of providing a complete picture of the information available as most of the customers requiring information obtain it through the internet; this is something that is not and cannot be taken into account in the context of this indicator. The indicator's conclusiveness regarding competition is also to be questioned. Other indicators, such as the number of services providers on the market, Indicator 9 and price comparisons and Indicator 4 seems to be a more suitable means of depicting the degree of maturity of competition.

Collection of data on customer complaints by the DSO is – at any rate in Germany – not workable for this indicator either. The DSOs have – with the exception of network connections – hardly any contact to customers since, as a rule, the network user relationship only exists between the DSO and the supplier.

INDICATOR 3:

Is there a reliable price comparison website available for customers?

Comment:

Publication of prices on the internet permits a market that is transparent. It is our view that in comparison with Indicator 2 this indicator is better suited to providing the customer with the necessary information on prospective service providers, existing contracts and prices.

Such price calculation services should be independent. Monitoring of creditability and quality is the target to avoid misleading of the consumer by the self-interest of the supplier regarding the comparison of prices. In addition, it would appear to make sense to examine the question as to what information, e.g. on service or the contractual terms and conditions of the electricity suppliers compared is to be taken into consideration in the consumer portal in addition to the price.

For example the verivox consumer portal (www.verivox.de) has existed in Germany since 1998 and is an independent and neutral consumer portal for the deregulated telecommunications and energy markets.

2. Retail Market Outcomes

INDICATOR 4:

End-user price for typical household customer

Comment:

Today it is standard practice to establish the end-user price by means of a rate calculator. This provides the customer with transparency as to the costs for the individual household (consumption): The rate calculator is to be such that the components of the price (with and without payment in advance; non-recurring bonus for switching to a different supplier, deposit models etc.) are clear.

If, in addition, there is to be a price enquiry by the regulatory authority, in this connection to other framework conditions such as the non-recurring bonus for switching to a different supplier, deposit models, discounts, price guarantee periods, duration of contracts, contractual terms and conditions (basic provision or special agreement outside the rules of the basic provision direction with a longer contract duration or periods of notice) are in addition to the question of advance payments, to be defined or recorded by means of independent indicators. Otherwise there will be the risk that the prices of “products different in nature” will be compared with each other. In view of the aforesaid, this indicator would appear to be very difficult and costly to capture if the danger of misinterpretation is to be ruled out. For this reason, it would make sense, if a standard product is to be defined at all (e.g. basic provision rate according to the basic provision directive without a bonus for switching to a different service provider, deposit and discounts as well as advance payments) and to establish the data relating to this product over an extended period before an indicator is derived from this.

It is our opinion that the EUROSTAT data already provide an entirely acceptable overview of a typical household consumption that can be seen easily and without additional administrative costs. In the event that a departure from the Eurostat categorisation is to be made, it should be ensured that the enquiries of the national regulatory bodies that are captured in the context of the monitoring of data enquiries on the basis of the Eurostat categories are adjusted correspondingly. Data enquiries at national and European levels based on different categories are to be avoided at all costs.

In addition, the reasons for the necessity of a quarterly provision of data do not make any sense. It is our view that it is certainly sufficient if the (annual average) price is communicated once a year. In the event that the ERGEG insists on receiving information on quarterly prices, it will suffice for us if we are provided with such information once a year.

INDICATOR 5:

Retail margin for typical household customer

Comment:

It is our opinion that the margin defined here for Indicator 5 is not an indicator suitable to describe competition. An “objective” comparison between different suppliers can certainly be carried out by means of sales prices (end-user price less taxes, network charges incl. KA) provided that the other contractual terms and conditions such as prices set for a specified period of time, contract durations, and services provided are also taken into consideration. There is little sense in comparing the sales price with the wholesale purchase price.

The wholesale purchase price is a “snapshot” subject to extreme fluctuations within the course of a year and also cannot be equated with the current costs of supply by the supplier who has a purchase portfolio. Hence, no clear assignment of a purchase price to a sales price is possible either. In addition, the wholesale prices do not only fluctuate strongly within the course of a year but are also highly dependent on the delivery period (half yearly, yearly or over a number of years), making it clear that in the case of comparison of the sales prices, the validity of prices for a specific period of time and contract durations have of necessity to be taken into consideration. All in all, reliable statements are only possible in the case of evaluations over a relatively lengthy period of time and in the case of comparable products and service levels. Hence, it would appear to make sense, if this is possible, to define a standard product (e.g. basic supply rate according to basic provision directive without the switching bonus, deposit and discounts as well as advance payment) and to establish the sales price charged for this product over an extended period of time before an indicator is derived.

What poses a problem in the definition of the margin is that the network charges, taxes and fees are still not to be taken into account with regard to the calculation method. This means that important cost segments of the EVU that can differ from each other widely due, for example, to local differences are not taken into consideration and presumably assigned to the margin of the company. This means an absence of data consistency and the impossibility of making a comparison using the indicator.

In addition, data on margins of a company operating on the market are among its fundamental trade and business secrets and their confidentiality is vital for competition. Publication of margins is not an objectively justified intervention in the business activities of energy suppliers. The VKU sees the danger of public authorities influencing areas of competition and draws attention to the fact that, as stated in No. 5.5 of the consultation documents re Indicator 8, regulated end-user prices and hence also implicitly regulated margins contradict a liberalisation of the energy market and an increase in competition.

The indicator is to be deleted for the reasons set out above.

INDICATOR 6:

Price spread on comparable products for typical household customer

Comment:

When data for this indicator is captured it must be ensured that the prices compared are those of products that are genuinely comparable. A comparison of prices of the most expensive and cheapest product on a given date can only be conclusive if the products are identical. If it is a question of products provided for contractually different periods, different periods for which prices are binding (e.g. one month or 3 years) or a different service level, the price spread of these products does not lead to any conclusions about the competition position and is hence not suitable as an indicator.

It is our opinion that data to evaluate price spreads can be collected conclusively and simply via public data sources that are already in existence (for example in Germany via the www.verivox.de consumer portal): Hence, an additional data enquiry and the resulting additional work for the supplier can be avoided. Collection of the data required for evaluation of Indicator 6 can easily be obtained by means of evaluation of the data contained on the web sites of the relevant market partners without it being necessary to request provision of the data from the companies in question.

INDICATOR 7:

Number of current offers to typical household customer

Comment:

It is the point of view of the VKU that this indicator is a suitable means of providing a picture of the competition existing on the energy market. What are to be taken into consideration here are not only prices but also other distinguishing product features such as the contract duration, notice periods, and service levels etc. in order to ensure comparability.

As already stated regarding Indicator 3, in Germany the www.verivox.de portal provides a good overview of the electricity suppliers on the market, the possible contractual options including those regarding payment (period for which prices are fixed, advance payment etc.), giving both the customer and the regulatory authorities a full overview of existing suppliers and the products they offer.

Under the German Energy Management Act (EnWG) energy suppliers are also required to register with to the Federal Network Agency, which keeps a list of the energy suppliers operating in Germany. The registration obligation relates to supply of household customers with electricity and gas. Gas is defined by Section 3 No. 19a of the Energy Management Act as being natural gas, liquid gas and biogas. The registration obligation exists irrespective of whether it is a question of supply of electricity from conventional sources of energy (gas, coal etc.), from

renewable forms of energy as defined by the German Renewable Energies Act (EEG) or from a combined heat and power generation facility. Hence, as the regulatory authority, the Federal Network Agency has its own list of suppliers of energy companies operating on the German market.

INDICATOR 8:

What percentage of customers is eligible to receive a regulated end-user price?
What percentage of eligible customers is served under regulated end-user prices?

Comment:

No regulated end-user prices exist in Germany. This is a clear indication of an energy market that is based on competition. It is the view of the VKU that implementation of competition accompanied by regulation of end-user prices is fundamentally contradictory.

Thus such an indicator is explicitly welcomed.

3. Market Structure

INDICATOR 9:

Number of active suppliers that are selling electricity and/or gas to household customers across the same market

Comment:

It is the opinion of the VKU that this indicator is a suitable means of obtaining a picture of the competition existing on the energy market. The data required regarding the number of suppliers can be captured conclusively and simply via public data sources that are already in existence. At least in Germany the number of suppliers per DSO is also monitored by the NRA. Hence, an additional data enquiry and additional work on the part of the supplier can be avoided. Capture of the data required for evaluation of Indicator 9 can easily take place by means of evaluation of the data contained on the websites of the relevant market partners or by assessing the data already collected by the NRAs without it being necessary to request provision of the data by the companies in question. In other words, making enquiries to the suppliers with the associated costs is to be avoided.

INDICATOR 10:

Market shares by number of customers and consumption

Comment:

With reference to the overall market (Germany-wide), this indicator undoubtedly shows that competition exists. However, it should not be broken down into individual suppliers/ areas as a large market share can also be an indication of attractive prices and good service in a defined area and may not be equated with an absence of competition. As a supra-regional indicator the market concentration in combination of other indicators would make sense.

The ERGEG proposes that data be captured at least once a year by the suppliers and network operators. However, it is the view of the VKU that this means doing the same work twice over without this necessarily leading to any further insights. Hence, we consider a calculation to be sufficient either by means of reports provided by suppliers or by the network operators. If the data is to be collected from the DSO, this should happen only annually. A more frequent collection of the data would constitute a disproportionate effort for the DSO without providing further benefits.

INDICATOR 11:

What percentage of 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?

Comment:

It is the view of the VKU that this indicator is unsatisfactory for a number of reasons.

For one thing, implementation of the third EU energy internal market package makes the obligation for network operators to introduce their own brands mandatory (ousting any confusion between network operators and distribution as defined by Art. 26 of the Electricity and Gas Directive) and therefore obligatory. This means that differentiation between own and outside branding of the network operator will no longer be relevant in the foreseeable future. Hence, introduction of this indicator enquiry can be dispensed with.

In addition, the customer is anyway not supplied by the distribution network operators but by the suppliers in the individual network area. Provision by the suppliers is without discrimination irrespective of branding or whether the network operators are separate.

According to the consultation paper the national regulatory authorities are also to decide whether network operators have their own branding. This means that for an EU-wide comparison a uniform interpretation by the regulatory authorities would be necessary. However, it is not yet clear how this is to be ensured.

4. Market Conditions and DSO Service

INDICATOR 12:

Number of switches for household customers as a percentage of customer numbers

Comment:

In the view of the VKU the number of switches is in the energy market in particular not necessarily a conclusive indicator of the existence of competition.

As already stated regarding Indicator 1, we want to disagree with the conclusion that a low number of customer complaints in connection with a low number of switches can indicate an absence of competition on the market. We explicitly draw attention to the fact that a low number of user complaints in conjunction with a low number of switches can also be an expression of satisfaction of customers with their current supplier. This holds even truer given the fact that in Germany in particular switching supplier is easy and entirely straightforward and customers can choose from a wide range of suppliers and types of contract without an above-average of switches occurring.

However, in the event that the switch rate proposed by the ERGEG is taken as an indicator, such data should not be collected quarterly but only once a year. Provision of data on a quarterly basis would lead to greater administrative costs. Furthermore, in the case of quarterly requests the periods of time are too short to enable suitable effects of the indicators in the market to be established.

In addition, it needs to be established that the data enquiry takes place uniformly through a body responsible for that matter. For example in Germany the percentage of switching from one network operator to another is anyway established by the Federal Network Agency in the form of the yearly monitoring report. Double data enquiries are to be avoided here at all costs.

Finally, it should be borne in mind that switching of supplier involves the business and trade secrets for the supplier. Hence, confidential treatment of data collected is essential.

INDICATOR 13:

Number of renegotiated contracts for household customers

Comment:

Here it first needs to be said that this data cannot be collected at DSO as it has no knowledge of rate switches at one and the same supplier.

Otherwise, the VKU is also of the opinion that the switch of rates should be captured together with the switch in supplier. As switching suppliers is just as straightforward as switching a rate, the number of supplier switches does not provide any further information on the way the end-user market works beyond the number of rate switches. Both procedures are to be seen as equivalent from the customer point of view. However, if nevertheless supplier and rate switches are captured separately, it must be ensured that the number of rate switches is not at all events taken as indicator for an absence of competition. Switching to a different rate with one and the same supplier is evidence of the existence of competition that finds its expression in measures undertaken by suppliers to create customer loyalty.

INDICATOR 14:

Number of delayed switches

Comment:

It is the opinion of the VKU that collection of this indicator raises a number of problems.

As it is to be assumed that a large number of the potential complaints are related to delayed supplier switches, Indicator 1 (number of complaints according to category) already reflects this circumstance. If delays in the case of supplier switch are again accounted for in the context of Indicator 14, this would result in doubling of the enquiry and hence to the possibility of distortion of the basis of evaluation as well as to additional work and costs on the part of the market partners concerned.

Should the ERGEG envisage collection of the instances of delay arising from “contractual issues”, these enquiries cannot be made to these at the DSOs as the DSOs have no information on these. In addition, it is not clear what is actually meant by “contractual issues”. Delays arising from legally permissible contractual periods and periods for giving notice may not in any circumstances be equated with other delays.

A further problem arises if the length of the delay is to be collected. The DSO could collect the number denied switches, although in the case of multiple delays of one switch, each delay would be counted as individual denied switch. The length of delays however is very hard to determine (because of complex inquiries regarding reasons, timeframe etc.) and should therefore not be collected from the DSO.

In addition, the conclusiveness of the indicator is to be called into question if the grounds for delays cannot be measured. The reasons for the delay can also lie with the customer if, for example, the customer provides the new supplier with data other than that it gave the old supplier or names a different authorised representative.

If, even so, Indicator 14 is introduced, it is the opinion of the VKU that an annual enquiry will suffice.

INDICATOR 15:

Number of failures in relation to the total switching rate

Comment:

In the case of a “failure to fulfil switch” it is also to be assumed that these cases come under the Indicator 1 category as complaints (reference is made to the remarks on Indicator 14). The VKU considers a further data collection to be disproportionate as this would give rise to additional costs without providing any new information.

Furthermore, the DSO is unable to say anything about the categories of “outstanding debts”, “transfer being in error” and “customer being in breach of contract” as this is beyond its scope. As typically the reasons for switch failures lie with either the supplier or the customer, it would seem to make little sense to enquire to the DSO regarding such a matter.

INDICATOR 16:

Average time between a connection being requested by a customer and completed

Comment:

It is the view of the VKU that this indicator does not achieve the intended target and for this reason should be deleted as serving no purpose.

For one thing, this indicator is not capable of drawing any conclusions as to the end-user market as network users and end-users are two different groups that only partially overlap.

Further, the time between the customer enquiry and completion of the network connection is not an indicator of the efficiency of the network operator as network connections are generally applied for well in advance and are then put in place with a view to an agreed date or over and agreed period of time.

The DSO has no interest in delays. For one thing, the DSO requires payment of the network connection, thus generating revenue; on the other hand it creates earnings via the ensuing through connections.

Important factors for the duration of the network connection are the network topology (level of the network development in the area of the new network connection) and the necessity of obtaining necessary permission. Also there is the possibility of delays caused by third parties (like authorities or customers with special demands). These are factors that the network operator is not able to influence.

In the event of disruptions, these will give rise to complaints and can thus be collected via Indicator 1 (please refer to remarks on Indicator 14).

However, there is no denying that definition and demarcation are highly difficult and thus the EU-wide comparability of results is to be called into question.

In conclusion, attention is to be drawn to the fact that Indicator 16 was already requested by the Federal Network Agency in the framework of its annual monitoring. Thus, no further request is necessary in Germany.

INDICATOR 17:

Average time until repair

Comment:

It is the view of the VKU that this is not a competition indicator but an indicator of supply quality and availability. Here, too, the DSO is not interested in delays as if the DSO takes excessive time over repairs it will only be harming itself as it is not able to earn anything during a repair period.

In order to avoid further bureaucracy, no newer requests should be made here but the yearly reports of the network operators that are anyway in existence evaluated with regard to the disruptions in provision of supplies.

If it is a question of a separate number of enquiries regarding repair times, a precise definition of the repairs in question is necessary at all events as this term can include matters that widely differ and cannot be compared with one another.

INDICATOR 18:

Relative number of disconnections

Comment:

Here, too, the VKU is of the opinion that it is not a question of a competition indicator relating to the end-user market. Supply disruptions are either technical in nature or caused by the customer on account of infringement of the supply contract. Neither case permits conclusions to be drawn regarding competition on the end-user market.

Should this indicator be used nevertheless, in order to avoid further unnecessary bureaucracy, the yearly reports of the network operators on supply disruptions that exists anyway should be evaluated (please refer to remarks re Indicator 17).

INDICATOR 19:

Is there a charge for execution of maintenance services? (Y/N)
Average time taken for execution of maintenance services
Average charge for execution of maintenance services

Comment:

Apart from the fact that “fees” in the electricity and gas industries – at least in Germany – no longer exist, it is not clear what “maintenance work” actually means.

While the execution times are captured, but are different in many of the products this makes data capture and its evaluation very difficult and comparison impossible.

In the event that planned maintenance work to the network leads to disruptions to supplies, these are anyway contained in the existing yearly reports of the network operators on disruptions to supplies. For this reason, as in the cases of Indicator 17 and Indicator 18, the yearly reports of the network operators on supply disruptions that exist anyway are to be evaluated.