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**Contribution by Oesterreichs Energie, Austria
EREG Public Consultation Paper on Draft Guidelines of Good Practice on Indicators
for Retail Market Monitoring
Ref: E09-RMF-14-04 / 16 April 2010**

Dear Mrs. Geitona,

The Association of Austrian Electricity Companies (Oesterreichs Energie) appreciates the opportunity to comment on the EREG Public Consultation Paper on Draft Guidelines of Good Practice on Indicators for Retail Market Monitoring.

Oesterreichs Energie represents the interests of more than 130 companies engaged in electricity generation, trading, transmission, distribution and sales. More than 90 per cent of the Austrian power generation industry and the entire distribution industry belong to our association.

We wish to make the following comments on the current draft guidelines.

General

We believe that the diversity of European retail market design should not be obscured by a “one size fits all” approach which could only yield misplaced conclusions.

In this connection we should like to refer to a study by NERA Economic Consulting entitled “Potential Competition in the Austrian Retail Electricity Market”, commissioned by ourselves. We would be happy to make this paper available to interested parties.

Benchmarking a range of indicators is only a productive approach if there is clear agreement on the reference benchmark, and market conditions in member states are truly comparable. We share the view, advanced by the consultation paper, that as a rule the information received should only be provided in aggregated form. We would also advise against publication.

Great care should be taken to define the indicators unambiguously, and to ensure that the methodology for the collection and analysis of the statistics is identical in all member states.

In the case of European comparisons of individual indicators — especially where these relate to margins, prices, etc — attention should also be paid to preventing distorting characteristics, such as directly or indirectly regulated prices, from influencing comparisons. We wish to note that in our opinion directly or indirectly regulated prices are anti-competitive, and that their abolition would do more for consumers than any amount of retail market monitoring.

Country characteristics such as differing stages of market development, consumer behaviour or size should be taken into account when analysing data. It should also be remembered that indicators may reflect developments at national level and nevertheless be unsuitable for European comparisons.

All duplication of data collection should be avoided because of the inefficiency and unnecessary expense that would result.

In accordance with the principle of proportionality, the cost of the collection of statistics for companies, relative to the benefits derived therefrom, should be kept within reasonable bounds.

Statistical surveys are not an end in themselves, but must be an aid to the fulfilment of the responsibilities established by existing national legislation.

The existing draft of the Guidelines of Good Practice on Indicators for Retail Market Monitoring fails to provide sufficient justifications for the numerous new surveys that it requires. It is hard to avoid the impression that much of the data to be reported serves the sole purpose of extending regulators’ powers to investigate and intervene in functioning energy markets.

A final general remark is that we can also conceive of data being collected by another independent body, rather than the regulator.

The following are comments on individual provisions of the draft GGP.

Customer satisfaction

- 1.) Customer complaints**
- 2.) Customer inquiries**
- 3.) Customer information**

It is impracticable to subdivide customer contacts into the proposed categories. For example, customer interactions related to the complexity of billing information (as is the case with most of them) are hard to assign to one of the above categories. Even if these were precisely defined we fear that subjective perceptions of customer behaviour would result in misinterpretations of customer satisfaction data. A precise definition of the situations to be captured by this indicator would certainly be essential. The intention can surely not be to record every single customer interaction. Even if companies' IT systems were capable of doing so it would make no sense to collect such huge volumes of data.

In addition, disclosures regarding customer interactions are subject to data protection considerations.

The proposed customer satisfaction indicators are unworkable.

Retail market outcomes

- 4.) End-user prices**

Use of end-user prices as a market indicator will be extremely complicated if biased results due to differences between markets are to be avoided. In particular, taxes and levies need to be looked at in detail as they vary from market to market, and can thus falsify comparisons to a significant degree. The fact that every country takes a different approach to the attribution of price components to the network charges, energy charges and taxes is bound to lead to distortions that would detract from the overall reliability of such comparisons. Past attempts to compare prices have met with the problem that state levies (e.g. green power surcharges or CO₂ levies) are often treated as components of energy prices, and such practices will continue to lead to the distorted presentation of information in future.

Account should also be taken of the special features of national markets and of the use of differing consumer demand categories.

Moreover, this indicator cannot be used in countries with energy prices that are fixed or regulated by the government.

Its value is any case questionable as Eurostat already publishes end-user price information.

We oppose the duplication of the collection of this data.

5.) Retail margin

For public authorities to express any opinions on retail margins would be tantamount to the back-door reintroduction of market regulation. It is inconceivable for governments to collect and process information on the profit margins of companies that are competing freely on liberalised markets. Energy procurement on the open market involves risk decisions by the suppliers. Who is to say what are “reasonable” margins on free markets? Moreover, the *ex post* comparability of the data would be highly questionable.

The situations of suppliers in different countries are not comparable (e.g. benchmarking against countries with government price fixing or price regulation). Neither is the concept of the retail margin comparable, since there is more than one definition. Price indexation would also complicate the development of an unbiased methodology.

We reject the publication of information on retail margins in competitive markets.

As business data also enjoys the fundamental right to data protection under section 1 of the Austrian Data Protection Act, a restrictive approach would have to be taken to legal powers to collect data. The Act states that interventions in the right to data protection may only employ “...the least intrusive of all effective methods.”

6.) Price spread

A wide price spread would result in a high switching rate. However in developed markets spreads between companies' prices are typically narrow.

When new suppliers enter the market price differentials tend to persist for extended periods (to the extent that some suppliers are even prepared to accept operating losses). Benchmarking price spreads would carry a considerable risk of directly influencing product design. This could narrow the choice of products open to consumers, and obstruct the development of products aimed at promoting energy efficiency.

7.) Diversity of contracts (offers)

This indicator is influenced by both the number of suppliers and the size of the country concerned.

In general, highly competitive markets tend to be associated with simpler products that are easier to communicate. It is thus unclear whether high or low contract diversity is indicative of a functioning retail market.

8.) Regulated end-user prices

This indicator should also take account of indirect price regulation, such as wholesale price regulation or cases in which the regulator influences product design.

We support an indicator for the identification of direct or indirect price regulation.

Market structure

9.) Number of suppliers

To obtain comparable information, not only absolute supplier numbers but also the percentages of consumers served by suppliers should be used as an indicator.

The average number of customers per supplier would also provide reliable and comparable results. In addition, market size should be taken into account.

10.) Market concentration

It should be remembered that the HHI and CR are highly theoretical measures, based on idealised markets, and their practical usefulness as objective yardsticks is questionable. These approaches ignore regional factors (market size, density, etc.).

The statistical presentation should be at European level only, and not broken down by countries.

11.) Branding

The comments on this indicator go far beyond the intentions of Art. 26(3) Third Electricity Directive, which states that: “vertically integrated distribution system operators shall not, in

their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.”

The formulation of this indicator is disproportionate, and we therefore recommend its deletion.

Alternatively, we would recommend aligning the wording to that of the Third Electricity Directive, and in all events deleting the sub-item, “– is totally separate from the supplier of that customer?”

Market condition and DSO services

12.) Switching rates

A precise definition of “switching” will be required if a uniform yardstick is to be applied and European comparability achieved.

The timeframe for this indicator needs to be carefully selected, to capture market trends over periods of several years. Account should also be taken of the stage of development that a given market has reached, as a straight comparison of switching rates would yield misleading results. High switching rates are typical of markets with wide price spreads.

Moreover, switching rates tend to be high in countries where energy costs represent a high proportion of household budgets.

13.) Renegotiations

We recommend **deleting this indicator** as the term “renegotiations” is extremely vague. The proposed indicator can neither be meaningfully captured in statistical terms, nor does the design of existing IT systems permit the collection of such information.

14.) Delays in switching process

15.) Failure to fulfil the switch

It should be remembered that there are often good reasons for delays in the switching process and for the failure of transfers to take effect that have nothing to do with obstruction on the part of electricity suppliers. Such situations can neither be meaningfully captured in statistical terms, nor does the design of existing IT systems permit the collection of such information. **This indicator does not yield any conclusions as to the reasons for delays in or non-performance of transfers.** The results generated by the proposed indicator would be open to misinterpretation, and we therefore recommend its deletion.

Problems with switching often arise from customer data. Examples are situations where the person seeking a transfer is not a party to the contract with the supplier or the minimum term of the contract has not yet expired.

16.) to 19.)

Indicators 16–19 are irrelevant to the proper functioning of the retail market, and we therefore recommend their deletion.

The average time taken to provide a connection and to make repairs, the disconnection rate, and the average time taken and charge for maintenance services are operational matters, and have nothing to do with the degree of market opening and competition.

To the extent that they are influencable at all, they depend on factors such as financial resources (the design of regulatory systems), network structures, national legal frameworks, and the geographical location of the DSO.

European comparisons would inevitably lead to misplaced conclusions.

16.) Average time until connection

This indicator, as described, is not informative, as network connections planned well in advance increase the average time to connection even if they take place on time.

We therefore recommend basing the indicator on overruns of agreed dates.

17.) Average time until repair

What matters to consumers is not the time until repair but the time until the supply is restored; this can also be achieved by line transfers or other provisional solutions.

The only relevant outage and restoration statistics (ASIDI, CAIDI, ASIFI, etc.) are already collected by the regulators.

We oppose the double collection of this data.

18.) Disconnection rates

The number of disconnections is solely determined by consumers' payment behaviour.

This indicator yields no information as to the functioning of the retail market.

19.) Maintenance services

The Austrian electricity industry fully supports useful statistical surveys, as it has shown by its past cooperation. However, we regret that we can only oppose surveys that place excessive demands on the respondents or are actually unworkable.

We hope that you will give due consideration to these comments, which are of considerable importance to our organisation.

Yours sincerely,

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