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### Energy – Survey on draft guidelines on Good Practices concerning defining Indicators on Energy Trading Supervision of the European Regulators Group for Electricity and Gas (ERGEG)

The Vienna Chamber of Labour (AK Vienna) would like to thank you for being provided with the draft guidelines concerning the subject matter mentioned above.

We basically welcome such an initiative, which pursues the objective of developing relevant and significant indicators enabling the proper assessment of the functioning of the energy market in particular also in respect of household consumers.

However, we would like to remark in this context that the assumption of a functioning, competitive market, which regulates supply and in particular prices itself in a transparent manner, is premature. Therefore, government price regulating mechanisms - at least at the level of household consumers - are an important mechanism in case the regulator establishes that prices are manipulated at the expense of household consumers. Currently one has to assume asymmetric market information, in particular due to the oligopolistic market structure at all market levels. Added to this is the lack of transparency with regard to pricing, which normally disadvantages small consumers, thereby subsidising the purchase price of bulk buyers. As long as these market conditions remain unchanged, the abuse proceedings before national cartel courts, from our point of view, are not an adequate instrument to protect in particular household consumers quickly and accurately against exploitation ("predatory pricing").

From the point of view of the AK, the draft recommendations only cover part of the problem areas regulated in the 3<sup>rd</sup> Energy Single Market Directive. What is still missing are the areas of "vulnerable customers", i.e. the disadvantaged consumers and the monitoring of offers of energy suppliers concerning energy efficiency.

That is why the following indicators should be supplemented:

#### 4 – Customer Satisfaction

The regulators should register in how many cases advance payments were agreed and whether overdue charges and charges for an instalment plan were set off.

#### 5 – Retail Prices

The price indicator alone reveals very little about the adequacy of the quality associated with it. Relevant problems are already very well known from the telecommunication sector. ERGEG should therefore start to think about the relation of price monitoring to quality monitoring.

With regard to the assumptions of the ERGEG under 5.5. – Regulated end-user prices – we have already stated in the introduction that due to the existing asymmetry of market information, the existence of such a mechanism is essential and cannot be sufficiently replaced by any intended cartel proceedings. This applies in particular to the protection of “vulnerable customers” as provided for in the 3<sup>rd</sup> Energy Single Market Directive but also to household consumers.

#### 6 – Market Structure

Basically, the indicators to determine market structures seem to be appropriate, however, in our opinion they are not quite sufficient. Even if the calculated concentration rate may be unobjectionable and well functioning competition can develop on its basis, the regulator might be misled if it does not monitor the phenomenon of “incidental parallel behaviour” at the same time. For in a fairly clearly structured market, market players can easily coordinate their price policy without any cartel agreements.

Therefore, from our point of view there is a lack of an additional indicator, such as frequency and amount of annual price increases etc.

#### 7 – Market Condition and DSO Services

With regard to this indicator too, there is no determination of possibly unfair contractual conditions for vulnerable customers.

Furthermore, the activities of energy traders concerning measures for energy efficiency, such as supplying information on energy saving measures or similar, should be established.

We would be delighted to receive more information on the further progress of the consultation process.

Yours faithfully



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