

# Draft Guide on Bundled Products

Public Consultation of the Council of  
European Energy Regulators (CEER),  
19.09.2018

Berlin, 14. November 2018. We greatly appreciate CEER's initiative to consult on its Draft Guide on Bundled Products. Below are our responses to the consultation. bne members are committed to a modern and flexible electricity market design allowing for truly competitive solutions.

Link to CEER consultation paper:

<https://www.ceer.eu/documents/104400/-/-/96ec6f1e-d4af-8a5b-b114-c9e6c1fdaadd>

## General Messages

bne strongly welcomes CEER's initiative to provide guidance and a set of principles on how to best treat bundled products for national regulatory authorities, ombudsmen, alternative dispute resolution bodies and companies. Overall, we endorse CEER's goal to help companies improve bundled products and services while consumers have a positive market experience. Though, the current text of the Draft Guide Book tends to focus largely on the perceived risks that bundled products may present. This gives the impression that bundled products are more a threat than an opportunity for consumers. Therefore, we would like to highlight that bundled products provide added value to consumers, for example by reducing the overall price and improving cost-effectiveness, through easy payment, convenience or simplicity. Beyond the monetary and practical benefits, there are a number of fundamental considerations that justify offering bundled products. From the consumer's point of view, many energy products are weakly differentiated or, if they were offered as a single product or service, would offer no or insufficient added value to the consumer. Especially in the case of politically intended products and services, such as those aimed at saving energy, improving building efficiency or using intelligent metering systems, it is only realistically possible to sell them successfully as a package with convincing added value for the consumer. In these cases, the added value must at least compensate for the consumer's additional costs resulting from individual measures and ideally overcompensate for them. Only then will consumers be prepared to invest in energy-saving and other efficiency measures or climate-friendly decentralised energy solutions. This means that bundled products enlarge consumer op-

tions and thus opportunities to engage in the market. Hence, we suggest having a more balanced presentation in the Guide Book and add some other true reasons for offering bundled products to it. CEER should certainly protect consumer rights, but it should also defend consumer choice and innovation.

## Consultation questions and bne responses

### 1. Do you agree in general with the 10 principles proposed in our Draft Guide on Bundled Products for companies, and the 5 principles proposed for regulatory authorities?

As described above, bundled products are considered to be an important element in the future energy market. As a general rule, bundled products should be as transparent as possible. Therefore, bne supports CEER's efforts in developing guidelines for improving bundled products. However, it is important that the guidelines correspond with national conditions and regulations. Thus, we see the main responsibility for designing, implementing and enforcing an adequate legal framework with the respective EU member states. CEER's advice should keep the character of high-level guidelines. Hence, we recommend avoiding the use of terms such as "must" in the text. Furthermore, we do not think that a specific regulatory framework for bundles is needed. Existing rules and regulation on consumer rights and protection, if correctly enforced, should be covering most issues raised in CEER's guide book.

Our assessment of the proposed principles is the following:

#### I. Simplicity for informed customer choices

Bundled products usually offer consumers simple solutions for complex problems and, which is more important, they could generate added value to refinance other investments. All of these features are typically greatly appreciated by the consumer. An example would be an energy supply contract linked to a service such as energy management. In this case, the consumer does not have to reconcile the contract structure of two providers. We consider the provision of the necessary information about the product and the related contractual terms and conditions for the consumer as a required standard business procedure. Thus, we clearly support a corresponding recommendation provided by CEER.

As there is a great variety of bundled products, comparing different bundles on a like for like basis might be challenged by the very nature of bundles, especially if those entail different services. However, we do not think that this is necessarily an issue. On the contrary, this shows that there is innovation in the market and competitive advantages are created – which is positive. From our market-driven perspective and experience, we strongly caution to aim for a fully regulated and pre-defined comparability of products, as this in the end would mean that companies will be forced to limit their offers to standard products, thereby discouraging – or even worse, entirely preventing – innovation. Furthermore, customers always have the possibility to compare the different components of a bundled product via online

research or – in case of a hardware component – via just going into a shop. For example, if the bundled product consists of a tablet combined with energy supply, customers have easy access to all relevant information needed.

Key in our view is that:

- Contractual terms and conditions are fully transparent and easily understandable by the consumer. They also need to be communicated in a transparent way.
- The terminology used in a bundled product offer, contract and bill is fully consistent, as it should be the case with any single product.

Under these conditions, the consumer should be able to take an informed decision.

With regard to the announcement period for contract changes, we do not support the provision in the guide book stating that “*any update or change to the initial contract should be notified to the consumer at a minimum one-month in advance*”. In general law for contracts with consumers, there are specifications for the period of announcements of contract changes. In addition, there is special law for the different sectors with different regulations for contract changes. As a minimum, the existing rules and regulation in each Member State with regard to the different sectors / product groups (which may differ from each other) should apply. The provider must be able to choose whether he includes the respective legal requirements in his contract terms or whether he uses a uniform announcement period for all individual products (while respecting the minimum legal requirements in place). It may be a competitive advantage if the provider is unifying the conditions across sectors and this decision should be up to his discretion and in our view is part of the freedom of contract. From our perspective, the national regulation in place is comprehensive and sufficient. There is no need for an EU specification. Furthermore, the proposed one month is problematic, since it is sometimes stricter than the existing requirements in individual areas. Hence, the guide book should not contain an obligation for providers to include a uniform notice period for contract amendments. In this context, we would like to point to CEER’s statement in the objective: “*Rather than recommending prescriptive obligations on companies (which is impractical given differing license conditions from country to country and product to product), this guide develops a set of principles that encourage companies to reach better outcomes for consumers.*” We think it is important to keep the Guide Book in line with this assessment.

## II. Clear liability principles

In general, we agree that the consumer may assert liability claims against the party with whom he has concluded the contract. However, there should be no interference with the contractual freedom and product design. With transparent contracts as well as general terms and conditions, it should also be possible to offer bundled products that have a second point of contact, in particular if special competences are required and the consumer could ultimately only be passed on by his contractual partner to the service provider with whom the contractual partner works together. Key is that roles and responsibilities of involved parties are clearly defined and



appropriately addressed in the internal contractual relationship between business partners, terms and conditions are transparent and easily understandable by the consumer and that there is a clearly identified party responsible and liable for any subsequent issue.

- III. Signposting of the responsible complaint handler in case something goes wrong  
For complaints and dispute resolution, the contractual partner of the consumer should have a coordinating role. Depending on the case, a subsequent allocation of individual products to different complaint or arbitration boards with specialist knowledge may make sense. An example would be the coupling of an energy supply contract with an insurance policy. In Germany for example, there are specialized conciliation bodies for insurance companies and for energy. The conciliation of a case concerning insurance law would not be assigned appropriately in the Energy Conciliation Body. Here, too, we strongly recommend a transparent, clear and concise contract design and information for the consumer, but no restrictive requirements.
- IV. Transparency is key  
We agree that transparency is the key principle, not just in terms of prices, but also in terms of contractual relations, terms and conditions. Terms and conditions need to be fully transparent and easily understandable by consumers. The terminology used in bundled product offers, contracts and bills should be fully consistent, as this should be the case with any product. However, we do not support the idea to break down the total price of a bundled product offer into all individual elements. We agree that warranty claims must be sufficiently secured and tax or state-induced portions of the price on the invoice need to be disclosed correctly (as already regulated by existing law). Though, the disclosure of the calculation of the product is counterproductive for innovation and competition, as innovative products would be unprotected in the market. Obviously, the offer, the contract as well as the invoice must contain the necessary information for easy traceability from the consumer's point of view. However, further specifications or recommendations are counterproductive since the offer, contract and invoice are also part of the communication with customers and thereby part of competition. Specifications on the number of invoices should be avoided. Instead, it is important that conditions for invoicing are agreed in a transparent manner between the consumer and the company while respecting minimum existing legal requirements.
- V. Billing  
We agree with the points of comparability of the invoice with the offer and the validity of the respective consumer protection regulations. However, the inclusion of third-party companies should in no case be prohibited as long as they work on behalf of the provider and in compliance with the legal requirements.
- VI. Payments for bundled-only products  
We fully support this principle.

VII. Respecting good guidance principles for price comparison tools

In general, bundled products compete with each other in the energy sector, especially in product design. Products should, if possible, be designed in such a transparent way that a consumer can use price comparison tools to assess whether the products meet his needs. However, we strongly caution to aim for a fully regulated and pre-defined comparability of bundled products, as this in the end would mean that companies will be forced to limit their offers to standard products, thereby discouraging – or even worse, entirely preventing – innovation. And in turn, this could result in eliminating competition overall.

VIII. The right to information about contract conditions

In general terms, we agree with this principle. There are strict consumer protection rules in place at both, EU and national level, and all existing rules and regulation should apply to bundled offers. However, we take a critical view of the idea that consumers may be able to continue individual services. Favorable prices for products usually result from synergies that no longer apply if individual components are cancelled. This must be taken into account in the price of individual services. We strongly support the provision that consumers may be charged a fee for the early termination of a fixed-term contract if this contractual term is clearly communicated to the consumer before signing the contract and also transparently stated in the contract.

IX. No disconnection of essential services

The implementation of consumer rights in relation to bundled products should be guided by the existing requirements for each product group. However, unnecessary bureaucratic requirements or restrictions should be avoided.

With regard to the coupling of products with essential services, as mentioned here in the example of energy, we also advocate for good information provided to consumers and transparent contract design. In Germany, there are extensive requirements, particularly with regard to disconnections of essential services, which prevent consumers from being unduly affected by disconnections and which are monitored closely by the national regulatory authority and the government.

These also apply to the energy supply contract within the bundled product contract. Here the respective national legislation should be recognized. Furthermore, the bundled product contract has to be regarded as a special contract and German Civil Code defines how and under what conditions contracts for the performance of a continuing obligation can be terminated. It is therefore necessary to clarify here that the bundled product contract can be terminated for good cause.

However, the contract termination does not result in a disconnection of essential services, though the consumer must look for another energy provider.

X. No dispute resolution fee

Conciliation procedures should always be conducted in accordance with the provisions of the respective alternative dispute resolution in each concerned sector. In

Germany, there are conciliation procedures and dispute settlement boards for each sector. There is no need to set up a multi-functional dispute settlement board.

As for the principles for regulators overseeing and regulating sectors with bundled products, we mostly agree with the articulated principles. We strongly suggest that no additional restrictions with regard to switching and contract termination are imposed on bundled products.

- 2. Do you think our proposals make appropriate use of principles and adopt the right amount of prescription? Have we gone too far, or not far enough to protect consumers while allowing companies in various sectors to be innovative in the bundled products they offer?**

We think that it is a good idea to promote framework conditions for bundled products which aim at fostering confidence in these products through appropriate consumer protection. In the future, bundled products in the energy sector will be an important element in enabling consumers to easily participate in the complex energy market. However, bundled products will not be limited to the energy sector. We expect great potential for bundled products and services from energy combined with the heating and mobility sector which will provide positive value to customers. In addition to consumer confidence, innovative strength and competitive freedom of design are essential elements for successful bundled products. We therefore support the idea of guidelines while there should not be any specific European regulation. Only in this way a balance between justified consumer protection requirements and competitive innovation in line with national circumstances can be achieved.

- 3. Do you think there are any areas of particular risk to customers that are not already addressed in this draft Guide on Bundled Products?**

We think the draft guide book is quite comprehensive and complete with regard to the potential risks associated with bundled products. A number of grey areas, as highlighted by CEER, may indeed need to be clarified through high level guidelines, but overall existing legislation, if correctly enforced, should be enough to answer most questions raised by bundles. Hence, we don't think that bundled products need a specific regulatory framework. Key is that terms and conditions of bundles are fully transparent and easily understandable by consumers, and that the terminology used in a bundled product offer, contract and bill is indeed fully consistent, as this should be the case with any product. In our view, this is what regulators should focus on. For the rest, we strongly advise to let market forces unfold their potential and give consumers as much choice as possible.

- 4. Do you agree with the proposal that there be a single point of contact so as to avoid ping-pong in the case of a customer having a problem with the bundled product? If not, what workable alternatives do you suggest?**

We refer to our comments on the principles 2 and 3. In general, no dogmatic standards and specifications should be imposed. Since, depending on the product, it may be that several

contact persons are simpler and more transparent for the consumer. From our point of view it is most important to provide clear information to the consumer about his contact persons.

**5. Can you provide best practice cases of regulatory treatment of bundled products?**

N/A

**Who we are: Bundesverband Neue Energiewirtschaft e.V. (bne) / Association of Energy Market Innovators – a strong voice for independent energy companies**

Market, competition, innovation: bne and its members are committed to these three elements. After all, continuous development is the key to success in tomorrow's digital and renewable world of energy. For more than fifteen years, we have been representing the interests of grid-independent energy suppliers and energy service companies in Germany. Our members operate on all levels of the value chain: from electricity and gas distribution to smart energy and other services, right through to mobility. Making sure that new business models get a fair chance is at the core of our work.

Interest Representative Register ID: 3394645201-03