



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **A**  
ECONOMIC AND SCIENTIFIC POLICY

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Competition Policy and an Internal Energy Market - study concept and preliminary results

# Competition Policy and an Internal Energy Market - study concept and preliminary results

In-depth analysis for the ECON Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

# Competition Policy and an Internal Energy Market

- study concept and preliminary results -

**Proceedings of the Presentation**

BRUSSELS, 21 March 2017

In-depth analysis

## **Abstract** ▼

The study will describe the challenges for competition policy in relation to the internal energy market. It explores the specific topics related to the internal energy market and analyses the competition policy issues arising from the topics. The study will mainly focus on competition policy and its instruments such as anti-trust laws, merger regulation, sector regulation and State aid. Other policy fields fall outside the scope. This presentation of the approach and preliminary results was prepared by Policy Department A at the request of the Committee on Economic and Monetary Affairs.

This presentation was requested by the European Parliament's Committee on Economic and Monetary Affairs (ECON).

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## 1. PROGRAMME



Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament  
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa  
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament  
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European  
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

### DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICIES

#### STUDY PRESENTATION: Competition Policy and an Internal Energy Market -study concept and preliminary results-

#### Programme

**Tuesday, 21 March 2017, 13.30 to 15.00 hrs, European Parliament, Brussels**  
Room ASP 1E2; no interpretation/En only; the event will be web-streamed

<b>13.30 – 13.35 hrs.</b>	<b>Welcome and Introduction: Markus FERBER, ECON Vice-Chair and Chair of the ECON Working Group on Competition Policy</b>
<b>13.35 – 14.05 hrs.</b>	<b>Presentation of the concept and preliminary results of the annual study on competition policy on ‘Competition Policy and an Internal Energy Market’ provided by Ecorys, NL</b>
<b>Robert HAFFNER</b>	Partner at Ecorys and leading the group specialising on competition and regulatory issues in the energy sector, Rotterdam, The Netherlands
<b>Kimberley VAN DEN BERGEN</b>	Consultant at Ecorys, NL
<b>Karolina RYSZKA</b>	Consultant at Ecorys, NL
<b>14.05 – 14.20 hrs.</b>	<b>Comments by:</b>
<b>Tatiana MARQUEZ URIARTE</b>	Deputy Head of Unit State Aid/Energy II, DG Competition, European Commission
<b>Alexander GEE</b>	Deputy Head of Unit Antitrust/Energy&Environment, DG Competition European Commission
<b>14.20 – 14.55 hrs.</b>	<b>Discussion on the findings of the study</b>
<b>14.55 – 15.00 hrs.</b>	<b>Closing remarks by Markus FERBER, ECON Vice-Chair and Chair of the ECON Working Group on Competition Policy</b>

## **2. CURRICULA VITAE OF THE SPEAKERS**

### **Robert HAFFNER**

Robert Haffner is partner at Ecorys and leading Ecorys' group, which specialises in advising on competition and regulatory issues in the energy sector. Robert is a seasoned industrial economist, with the following key focus area: the design, implementation and evaluation of competition and regulation policies, formulating strategies to optimally respond to regulation and competition measures, and assessing the impact of regulation going forward. Prior to joining Ecorys, Robert has worked for two Dutch ministries and PwC. He also used to be the Chief Economist of the Dutch energy regulator where he not only was involved in major decisions with respect to the regulatory framework for transmission and distribution, but also in setting up the market monitoring function of the regulator on wholesale and retail gas and electricity markets. Robert has co-authored two books and various articles on the macroeconomic impact of competition policy and regulatory reform.

### **Kimberley VAN DEN BERGEN**

Kimberley is a consultant in the Industry, Competition & Energy group at Ecorys. After obtaining her bachelor degrees of Economics and Dutch Law at the Erasmus University, she obtained her Erasmus Mundus Master degree in European Law and Economics (LLM, MSc) in the interdisciplinary field of law and economics, from the universities of Hamburg, Bologna and Mumbai. She specialised further in the field of competition at the University of Amsterdam with a European Competition Law Master. Prior to joining Ecorys she gained work experience during an internship at the law firm Houthoff Buruma in Brussels.

### **Karolina RYSZKA**

Karolina joined Ecorys in March 2016 as consultant for energy, climate change, industry and competition. Since then she has worked in the areas of (renewable) energies and competitiveness. After she obtained her Master (MPhil) at the Tinbergen Institute in Amsterdam, Karolina did a PhD at the Vrije Universiteit in Amsterdam. In her dissertation, which combined the fields of climate change, resource and energy economics, Karolina assessed the effects of climate policies, such as carbon taxation and renewable subsidies, on curbing climate damages, but also regarding social and economic welfare.

### **Tatiana MARQUEZ URIARTE**

Deputy Head of Unit State Aid/Energy II, DG Competition, European Commission

### **Alexander GEE**

Deputy Head of Unit Antitrust/Energy&Environment, DG Competition European Commission

### 3. BACKGROUND AND PURPOSE OF THE STUDY

The Competition Working Group in the Committee on Economic and Monetary Affairs (ECON) seeks to gain an overview and to address the currently most important issues and imminent questions in the energy sector related to competition. Energy sector issues concerning the competition sector started to be tackled with the first legislation to liberalise electricity and gas market in the 1990s. After that, three packages<sup>1</sup> of legislative measures were adopted between 1996 and 2009 in order to complete the internal market<sup>2</sup>. Owing to the adoption of such directives, customer supply (competitive field) has been differentiated from the transmission and distribution networks (less competitive field). Subsequently, third parties were allowed to have access to the infrastructure; customers received the possibility to select and switch their supplies, etc.

After carrying out a sector enquiry, the European Commission found that competition still remained weak in the energy sector<sup>3</sup> as too much market concentration remained in most national markets and there was little integration among Member States' markets. In addition, market entry was still complicated and customers were tied by long-term contracts. Due to the low level of transparency of market information, trust in the established pricing mechanisms declined. The results of the enquiry led to the third package on energy legislation, adopted in 2009. Moreover, the Directorate General for Competition of the European Commission opened proceedings in individual cases in the areas of anti-trust<sup>4</sup>, merger control<sup>5</sup>, and State aid<sup>6</sup>.

To coordinate the transformation of European energy supply, the European Commission launched the Energy Union Strategy<sup>7</sup> in February 2015. Such a strategy represents a further step towards an integrated, interconnected and resilient energy market which is expected to provide secure, sustainable, competitive and affordable energy<sup>8</sup>. The Energy Union Strategy pursues energy policies which are based on the principles of energy

<sup>1</sup> **First package:** Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0092:EN:HTML> and Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0030:EN:HTML>.

**Second package:** Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC - Statements made with regard to decommissioning and waste management activities, <http://eur-lex.europa.eu/eli/dir/2003/54/oj> and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32003L0055>.

**Third Package:** Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Text with EEA relevance), <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32009L0072> and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0073>.

<sup>2</sup> The Union's policy on energy was introduced by the Lisbon Treaty; Article 194 TFEU is the basis for legal measures.

<sup>3</sup> [http://ec.europa.eu/competition/sectors/energy/2005\\_inquiry/index\\_en.html](http://ec.europa.eu/competition/sectors/energy/2005_inquiry/index_en.html).

<sup>4</sup> For example, the case of Distrigas, a Belgian electricity provider, [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/37966/37966\\_639\\_1.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/37966/37966_639_1.pdf)

<sup>5</sup> For instance, the merger between EDP and GDP in Portugal, [http://ec.europa.eu/competition/mergers/cases/decisions/m3440\\_20041209\\_610\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m3440_20041209_610_en.pdf).

<sup>6</sup> For example, an-depth investigation into power purchase agreements in POLAND that ended with a positive decision with certain conditions. In contrary to this positive result in a case on similar agreements in Hungary the Commission requested to recover aid, [http://europa.eu/rapid/press-release\\_IP-08-850\\_en.htm](http://europa.eu/rapid/press-release_IP-08-850_en.htm).

<sup>7</sup> Text of the Communication, [http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF) and its annexes, [http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_2&format=PDF).

<sup>8</sup> See Report on Competition Policy 2015, p. 15, [http://ec.europa.eu/competition/publications/annual\\_report/](http://ec.europa.eu/competition/publications/annual_report/).

efficiency, aiming at an important reduction of the pollution and at a decarbonisation of the economy (for example, fostering the diffusion of electric vehicles).

The European Commission conducted a further enquiry in 2015, specifically targeted to electricity capacity mechanisms that have been set up by some Member States to ensure a stable electricity supply<sup>9</sup>. The interim results<sup>10</sup> of this enquiry show that not all of these mechanisms are necessary, and some could be better designed so that electricity can flow across borders, and consumers do not overpay for electricity. After a public consultation in 2016 the final results were published at the end of November 2016<sup>11</sup>. The primary conclusion that the Commission draws relates to future insufficient generation capacity, which will remain in the market or continue to come forward to ensure adequate (national) security of supply.

The Competition Working Group in the ECON Committee has therefore requested a study on the crucial questions currently discussed in the energy sector (covering all energy sources, such as fossil, nuclear and renewable energy, and the whole value chain from generation through transmission to distribution) related to competition policy. The purpose is to improve understanding in which way competition policy is able to contribute to achieving a working internal energy market. The focus is on how existing problems could be addressed by the EU competition policy and other rules or policy instruments.

The aim of this presentation is to explain the approach of the study, which is currently being prepared, and to present some very preliminary results from the on-going analysis. Current challenges and the areas in which the enforcement of the competition rules is under way will be discussed.

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<sup>9</sup> [http://europa.eu/rapid/press-release\\_IP-15-4891\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4891_en.htm).

<sup>10</sup> The interim report of sector enquiry on electricity capacity mechanisms, [http://europa.eu/rapid/press-release\\_IP-16-1372\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1372_en.htm).

<sup>11</sup> [http://ec.europa.eu/competition/sectors/energy/capacity\\_mechanisms\\_final\\_report\\_en.pdf](http://ec.europa.eu/competition/sectors/energy/capacity_mechanisms_final_report_en.pdf).

## 4. SLIDES

# Study on Competition Policy and an Internal Energy Market

Brussels, March 21 2017

**ECORYS** 



European Parliament

### Aim of the presentation

- Information about our approach/methodology;
- Aim:
  - **Presentation** of the objectives, key issues and interim findings of the study;
  - **Discussion** of the main issues;
- Many of the issues discussed have been identified by Members of Parliament and mentioned in the Terms of Reference - Ecorys has added and built on these issues
- To provide context, we start with a general introduction of the European Energy Market and major policy developments.

## Aim and methodology of the study



### Aims of the study

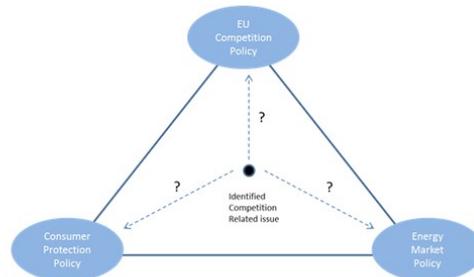
The study aims to:

- Provide an overview and address the currently most important problems and imminent questions in the energy sector related to competition;
- Identify the implications of these issues on the internal market;
- Provide an overview on how these issues can be addressed by competition policy or other rules/policy instruments.



## Approach and methodology

1. Identification of competition issues in the field of the internal energy market;
2. Making a distinction between issues relevant to competition policy instruments and issues relevant to other policy areas;



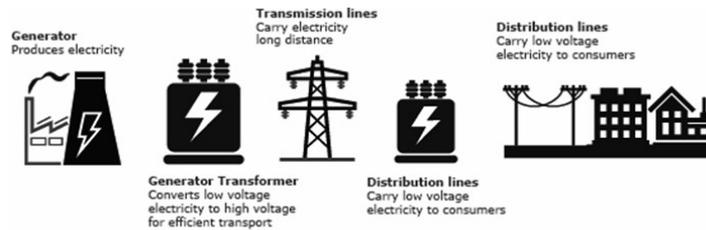
3. Mapping of existing research and solutions offered by EU competition law.

## Overview of the EU Energy Market

## Basic structure of the EU electricity system

- Generation

- Retail market



- Wholesale market

- Consumption and decentral generation



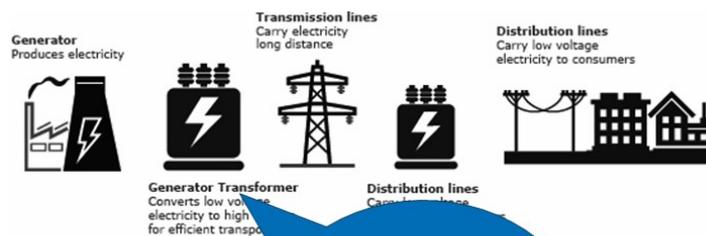
Source: Ecorys.

7

## Basic structure of the EU electricity system

- Generation

- Retail market



- Wholesale market

- Consumption and decentral generation

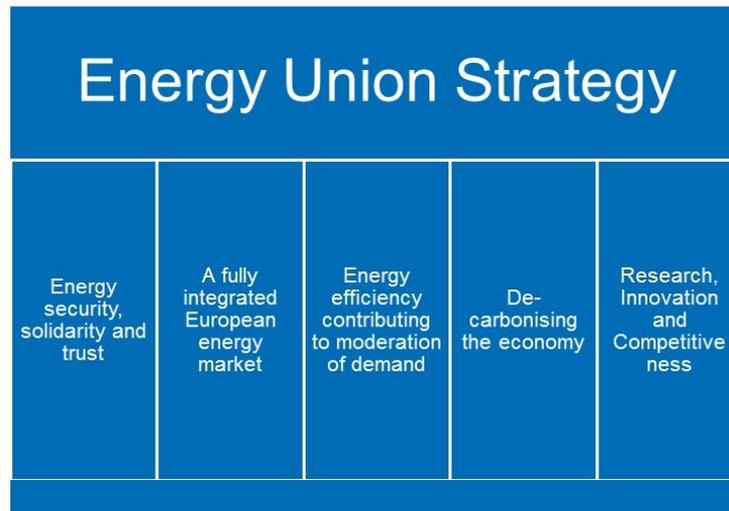
The structure is changing, which leads to new challenges



Source: Ecorys.

8

## The EU Energy Union Strategy has five pillars...



## ... and leads to new initiatives

- Third package on the Internal Energy Market (2009):
  - Directive on the promotion of the use energy from renewable sources;
  - Directives concerning common rules for the internal market in electricity and natural gas;
  - Regulation on conditions for access to the network for cross-border exchanges in electricity;
  - Regulation establishing an Agency for the Cooperation of Energy Regulators;
- Guidelines on State aid for environmental protection and energy 2014-2020, 28 June 2014, COM (2014), OJ C 200/01;
- Recent proposals regarding the governance of the Energy Union, to promote the use of renewable energy and the internal market for electricity, low-emission mobility, ...

# Theoretical background & practical implications



## Competition policy

### Competition policy instruments

1. Competition law instruments: they are used by the EC and specific Member State governments to deal with competition cases;
  - Antitrust (including cartel prosecution and measures against the abuse of dominance);
  - Merger control;
  - State Aid;
2. Sector specific regulation: e.g. Energy Market regulations;
3. General rules addressing specific competition problems, such as consumer protection regulation.

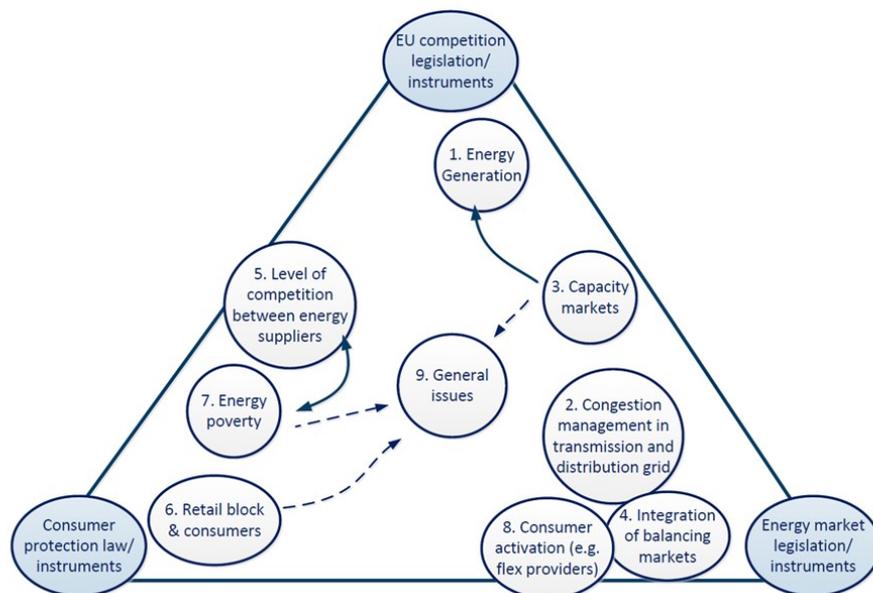


### Nine selected topics

1. Energy Generation and State aid;
2. Congestion management in the transmission and distribution grid;
3. Capacity remuneration mechanisms;
4. Integration of balancing markets;
5. Level of competition between energy suppliers;
6. Retail and consumers;
7. Energy poverty;
8. Consumer activation;
9. General issues.



### Energy policy triangle

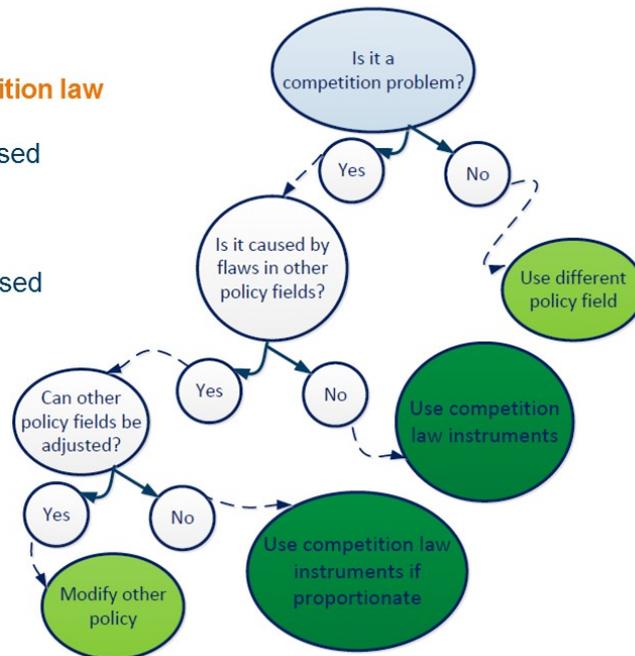


## Competition law

### When to use competition law

1. Issues to be addressed by competition law;
2. Competition law addressing issues caused by other policies.

### And when to use other policies?



## Competition policy and the Internal Energy Market



## Generation

### Topic 1 - Energy Generation and State aid

#### Issue:

- No level playing field for different technologies through national renewable stimulation mechanisms;
- Policy fragmentation on EU-level has an impact on competition within the EU.

#### Solution:

- Ensure national renewable stimulation **mechanisms/energy market regulations** are in line with State aid regulations by design, as violations of **State aid** regulations can be difficult to detect (aid needs to be technology-neutral and proportionate, e.g. no paramount subsidies for solar while other renewables are treated disadvantageously);
- **Harmonization** of national energy policies with significant impact on the internal market.

## Wholesale market

### Topic 2 - Congestion management in the transmission and distribution grid

#### Issue:

- No level playing field for different electricity suppliers;
- Room for strategic behavior of market players and misuse of market power in energy production and transmission e.g. through capacity withholding;
- Integration of new market entrants ('aggregators') to increase flexibility (distribution grid).

#### Solution:

- **Non-discriminatory CM design** (independent TSO's and DSO's, policy framework with clear roles and responsibilities, embedding new market actors, and allocation of capacity on a non-discriminatory basis);
- More **short-term scheduling** of cross-border transmission capacity.

## Wholesale market

### Topic 3 - Capacity remuneration mechanisms

#### Issue:

- No level playing field for different technologies;
- Policy fragmentation on EU-level affects competition;
- Strategic reserves may erode investment incentives for new capacity and distort the market (e.g. discouraging the development of new, efficient plants).

#### Solution:

- **Non-discriminatory and competitive capacity market design** (capacity mechanisms must be open to providers in all MS and the price paid for capacity must be determined in a competitive process, not through an administrative procedure).
- **Clear rules** on deployment of strategic reserves (not used to keep prices low, not reinforce the position of incumbents).

## Wholesale market

### Topic 4 – Integration of balancing markets

#### Issue:

- Insufficient competition on the EU balancing market (due to long-term contracts, lack of integration of balancing markets).

#### Solution:

- **Harmonization of rules** for balance responsibility and imbalance settlement to ensure a level playing field among Balance Responsible Parties;
- **Non-discriminatory regulation** concerning cross-border balancing (more integration / facilitation of cross-border balancing service);
- More **short-term scheduling** of cross-border transmission capacity.

## Retail market

### Topic 6 – Retail and consumers

#### Issue:

- No level playing field in retail markets and insufficient access of new entrants in the energy market, such as aggregators, hinders competition;
- Question on who obtains access to smart-meter data can have effects on competitiveness of new entrants;
- Hurdles for consumers to switch energy supplier, competition within retail market;

#### Solution:

- **Non-discriminatory regulation** concerning new entrants (e.g. non-discriminatory access to smart meter data next to consumer protection regulations);
- **Consumer protection regulations** to remove hurdles to switch energy suppliers and increase confidence.

## Consumption and decentral generation

### Topic 7 – Energy poverty

#### Issue:

- Some MS instruments to combat energy poverty can have competition effects, such as state control of or a cap on electricity retail prices or social energy tariffs.

#### Solution:

- Explicitly account for impacts on competition when designing energy poverty measures.

## Consumption and decentral generation

### Topic 8 – Consumer activation

#### Issue:

- Level playing field for different kinds of consumer participation, such as energy cooperatives, prosumers and micro-grids, while ensuring sufficient consumer protection;

#### Solution:

- **Non-discriminatory regulation** concerning prosumers and energy cooperatives (e.g. regarding the ability to choose the energy supplier to sell the generated energy to, avoiding captive 'prosumers');
- Regarding the regulation of (private) micro-grids: find a balance between **consumer protection** and **sufficient incentives** for micro-grids.

## Total value chain

### Topic 5 – Level of competition between energy suppliers

#### Issue:

- Competition between energy suppliers on both the wholesale and the retail market is affected by the topics discussed before, but also, classically, by the market structure (number of suppliers and concentration);
- Market power has negative consequences for consumers.

#### Solution:

- **Consumer protection regulation** and **merger control** can ensure sufficient competition levels on different energy markets.
- Ensure barriers to entry are appropriate and proportional;
- **Antitrust** measures to curb misuse of market power (see recent Gazprom case).

## Total value chain

### Topic 9 – General issues

#### Issue:

- What are the general guidelines or scenarios when public aid is beneficial for competition?

**To be answered after an in-depth analysis of the previous topics.**

## Conclusion / Questions

## Preliminary conclusions

- Issues which might potentially have negative competition effects within the Internal Energy Market can be solved by appropriate, i.e. competition-conform market design. They can hence be solved by energy market and consumer protection regulations, for instance.
- The contribution of competition law in solving the topics discussed is most prominent in cases such as:
  - Enforcement of **State aid** regulations with respect to (e.g.) national renewable energy stimulation mechanisms and capacity market design;
  - The role of **merger control and antitrust** regarding the level of competition between energy suppliers.

## Questions for discussion

1. When it comes to capacity mechanisms, many different forms exist. How can it be ensured that the incentives of the competitive process are optimally used?
2. Given the decline in energy prices and the increases in e.g. taxes and other costs, how can it be ensured that retail market competition remains attractive?
3. What is the appropriate balance between ex post intervention and ex ante regulation? When should competition law instruments be preferred?
4. What is the appropriate balance between national and EU energy policies?

## 5. SUMMARY OF THE DISCUSSION

As previously underlined, this study has not yet been completed, and research is still ongoing. However, the discussion taking place after the presentation of first results could help shed some light on the research under way and some questions that still need to be looked at.

The following issues have been discussed:

Tatiana MARQUEZ URIARTE started her contribution by recalling that fragmentation is still a big challenge to overcome in order to achieve an internal energy market. She highlighted for instance that some Member States get into competition with each other on giving the most support to energy generators. Ill-designed support schemes can thus fragment further the internal market. It is Commission's role to ensure that support schemes do not unduly distort the internal energy market. It has to make sure that aid is limited to the minimum and provided only when it is strictly necessary. The Commission also encourages Member States to cooperate more closely among themselves in regulatory issues.

Tatiana MARQUEZ URIARTE also stated that competition enforcement and regulation on energy policy have the same ultimate goal, i.e. to achieve a sustainable, competitive and secure energy sector. The best results are obtained when both competition enforcement and regulation act together, thus their combination is necessary.

Alexander GEE recalled that Competition makes the Energy Union function properly by opening markets, avoiding discrimination and creating a level playing field between all market players, regardless of their nationality. Competition also opens up markets to renewable sources and promotes security of supply by ensuring that energy flows where it is most needed. It ultimately promotes fairness and economic growth within the EU.

Alexander GEE underlined that antitrust enforcement aims to ensure that the results achieved by market liberalisation will not be replaced by similar barriers created by market players. In practice (given the history of the sector as largely national monopolies) this means enabling the free-flow of energy (e.g. Gazprom case) and addressing any abuse of a dominant position by incumbent companies. Finally, he said that the presentation seemed to focus more on how to develop pro-competitive market structures and potential failures of competition in the energy sector, but not so much on competition enforcement.

Looking at a decision by the European Commission which gave the green light to a financial support by the Hungarian government for the construction of a nuclear plant<sup>12</sup>, Tibor SZANYI asked the Commission experts whether they intended to examine more in detail the issue of self-sufficiency and the autonomy of a state regarding its energy mix.

Markus FERBER reflected on the market structure and asked whether the concept of energy poverty is linked to that of **services of general economic interest**, and whether a **universal service obligation** also existed in the energy market. The Chair also pointed out that in order to have an effective internal market, it would be fundamental to overcome the currently still fragmented system in the 28 different Member States. The question was indeed about one single market or 28 individual markets which were interlinked. He continued on the currently existing close link between production and consumption of energy and talked about the long term perspective of being able to produce energy where there is enough sun or wind (e.g. Greece, Spain) and transport it via long distance to the regions where it is needed (e.g. Finland). In her reply, Karolina RYSZKA highlighted that many Member States are dealing with the energy poverty issue since they believe that it is

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<sup>12</sup> Tibor SZANYI referred to the Commission decision concerning PAKS II, for further information, please see Commission press release: [http://europa.eu/rapid/press-release\\_IP-17-464\\_en.htm](http://europa.eu/rapid/press-release_IP-17-464_en.htm). The public version of this decision is not yet available on the European Commission website.

a severe problem. However, many European countries have introduced instruments, such as social tariffs, that risk impeding competition on the retail market.

Robert HAFFNER brought up the concept of '**reverse State aid**' referring to lower tariffs for certain consumers in need as such instruments have a negative competition impact but they do not have the same impact as direct State aid would have. Such measures would however affect the level playing field. He continued that access to energy sources should be considered as a service of general interest. Currently, there is an implicit universal service obligation, because reliable, affordable energy is a clear objective, but the boundaries of the universal service obligation are not well defined. For example, it is not clearly defined what level of reliability is required or acceptable in the energy sector. It is left up to network operators to decide on the socially optimal level of reliability.

With regard to the internal energy market, Robert HAFFNER further argued that an integrated market and harmonised policies are needed. For instance, when congestion arises because supply and demand are not in the same location, competition policy instruments are not much suitable to solve this problem while specific energy market policies in his view seem to be more appropriate.

Robert HAFFNER explained that the study is going to reveal that some problems related to an internal energy market are not pure competition policy issues. Choices to be made also depend on the extent consumers need protection.

Tatiana MARQUEZ URIARTE stressed that it is possible to protect vulnerable consumers protection and ensuring affordable prices without creating competition issues. She also underlined that the concept of State aid is linked to the notion of companies. Financial support directly granted to consumers is not generally considered as a State aid, but as a measure of social policy (e.g. reduced tax rates on energy consumption). Intervening in the wholesale market, in order to avoid prices are the result of demand and supply, would instead create competition issues.

In reply to the question asked by Tibor SZANYI on the European Commission decision concerning the PAKS II nuclear power plant in Hungary Tatiana MARQUEZ URIARTE explained that the Commission had approved the aid scheme not on the basis of any need of Hungary of becoming self-sufficient from an energy point of view, but on the basis of the Euratom Treaty, which requires the Union to facilitate investments and ensure the establishment of the infrastructures necessary for the development of nuclear energy in the Union. She mentioned that Member States have the right to choose their energy mix and that Hungary had chosen to meet a part of its energy needs through nuclear energy. One of the issues that the Commission checked was that the support scheme did not involve overcompensation.

Alexander GEE explained that, from a competition point of view, we should not expect the Energy Union or competition enforcement to create a single EU-wide geographical market for most products/services (e.g. retail electricity or gas supply to domestic customers). Rather, the aim is to remove any artificial barriers so that markets reflect objective barriers and market conditions.

Markus FERBER then raised the question whether it was a contradiction using capacity remuneration mechanisms at national level in order to develop energy markets because such national instruments could further hinder the achievement of a European internal market in this sector.

Robert HAFFNER agreed that national capacity remuneration mechanisms, in their current form, distort the internal market due to different supply risk assessments and risk appetite in different Member States. Hence, he welcomed the features designed to ensure compatibility proposed in the European Commission Winter Package on power market

reforms. In this context, he asked the Commission representatives whether it would be useful to provide some guidance for market participants in case of high prices in the market exceeding the short-run marginal cost. How would this be assessed from an antitrust perspective?

Tatiana MARQUEZ URIARTE replied by highlighting that the Commission had already provided guidance on how national capacity remuneration mechanisms will be assessed by the Commission and how such tools should be designed to ensure competition. As stated in the Commission report on capacity mechanisms, when Member States have schemes in place that do not comply with the guidelines, the Commission will start a discussion with them to work out a solution to get the respective mechanisms in line with the Commission's requirements.

Robert HAFFNER clarified that his question aimed more at the necessity of providing guidance on the assessment of price peaks (e.g. exceeding short-run marginal costs, every price above could be perceived as potentially abusive rather than a sign of scarcity).

In his reply, Alexander GEE emphasized that the Commission normally does not provide guidance of this sort on antitrust issues. However, it would be surprising if the Commission would launch a competition investigation into company pricing in a competitive market only on the grounds that prices were considered too high. In a competitive market there will sometimes be high prices where this reflects high demand combined with a shortage of supply.

In his concluding remarks Markus FERBER reminded the audience that even if the rules on competition have been in the Treaties since the very beginning of the European integration project, competition in the energy market remained to be difficult. It was therefore essential to have a proper understanding of how the energy market worked before drawing any conclusions or providing policy recommendations. In this context, today's discussion has already given more clarifications on the current issues for competition regarding an internal energy market. The Chair closed the discussion by thanking the authors and the participants and recalling that the final text of the study is going to be published before the summer.

# PRESENTATION



POLICY DEPARTMENT A  
**ECONOMIC AND SCIENTIFIC POLICY**

## **COMPETITION POLICY AND AN INTERNAL ENERGY MARKET**

Study concept and preliminary results



DATE

**Tuesday  
21 March 2017**

TIME

**13:30-15:00**

ROOM

**ALTIERO SPINELLI  
BUILDING  
A1E-2**

### **Committee on Economic and Monetary Affairs**

Participants needing a badge must register  
providing their name, full address, date of birth, nationality and passport  
or ID number by 13 March 2017 to [guy.tachelet@ep.europa.eu](mailto:guy.tachelet@ep.europa.eu)

# NOTES

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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