

Competition and Energy

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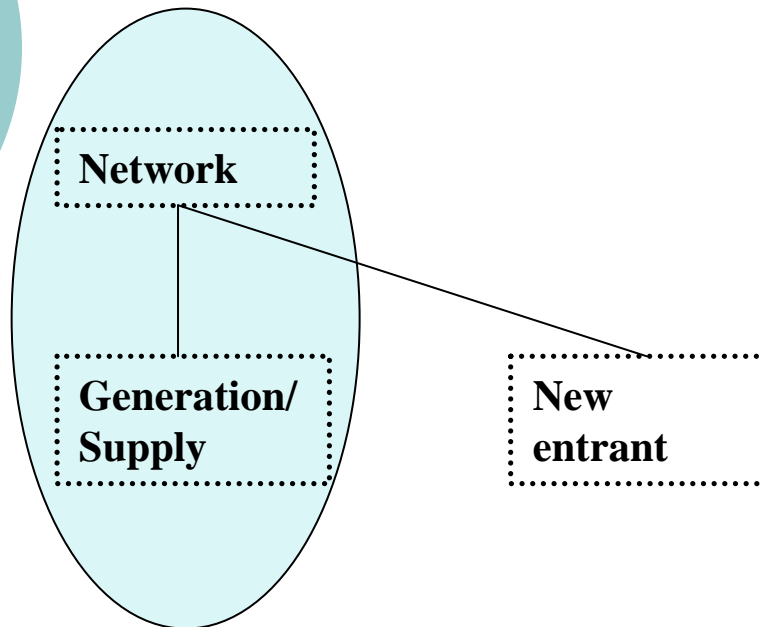
Member of Cabinet of Commissioner for
competition Neelie Kroes

The big picture

- Liberalisation
- Sector Inquiry
- Vigorous art. 82 enforcement
- Third energy package

- ETS
- Strategic Energy Review

The basics



- Network is essential facility
- Unregulated network owner would have immense intrinsic market power
- Downstream barriers are surmountable
- Public interest: regulate network to avoid exploitation of market power
- Private interest of incumbent: use network to prevent entry

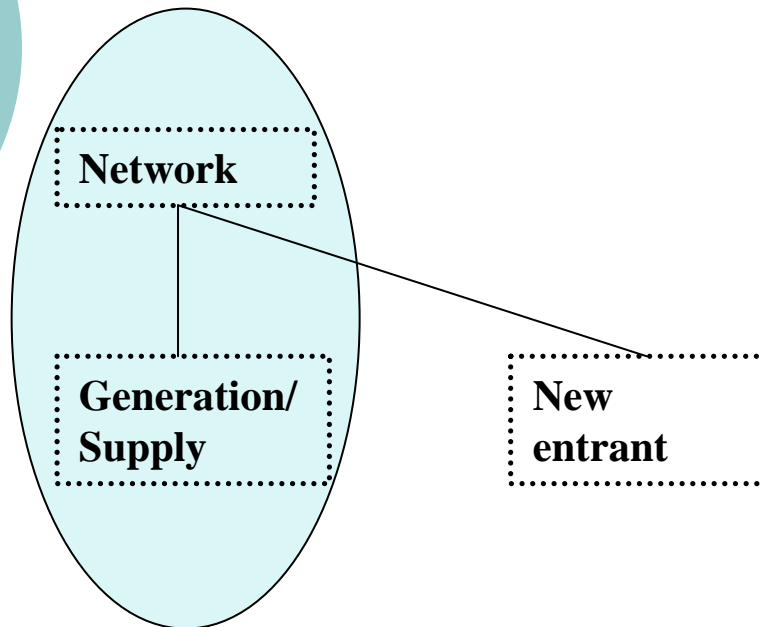
Problem well known

- When you have an upstream regulated monopoly:

"when vertical integration by the monopolist is allowed, the regulator's task is made harder insofar as the monopolist has anticompetitive incentives to raise rival's cost."

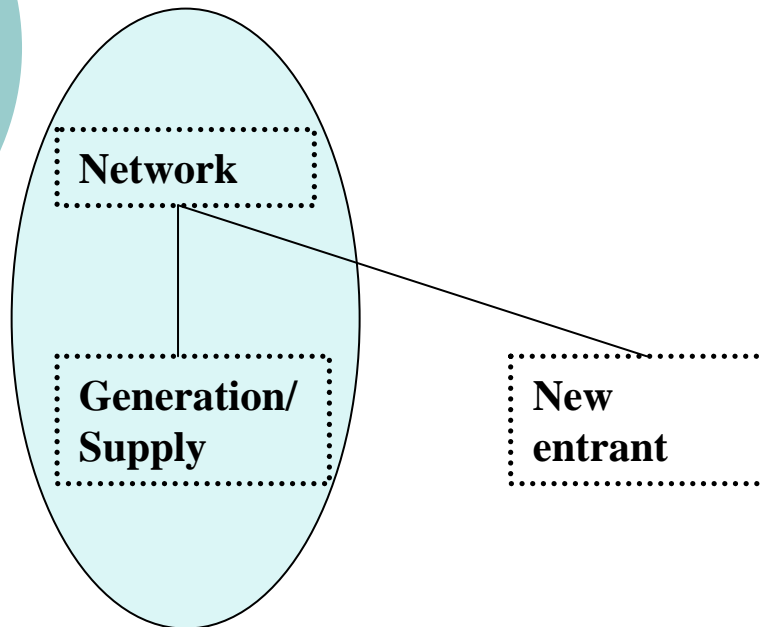
Vickers in "Competition and Regulation in Vertically Related Markets" RES (1995)

How to raise rivals cost 1



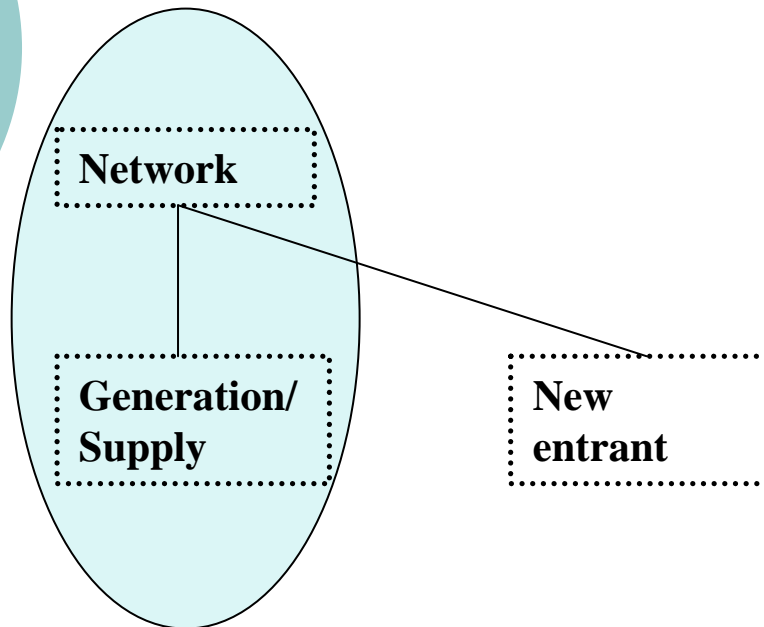
- Make usage by competitors difficult
 - Pretend it is fully booked.
 - Book it yourself. On a long term basis.
 - Decrease quality assymetrically. Make it interruptable.
 - Sell it in inconvenient packages at inconvenient times.
 - Make sure storage is either not available or sold at different times for different durations.

How to raise rivals cost 2



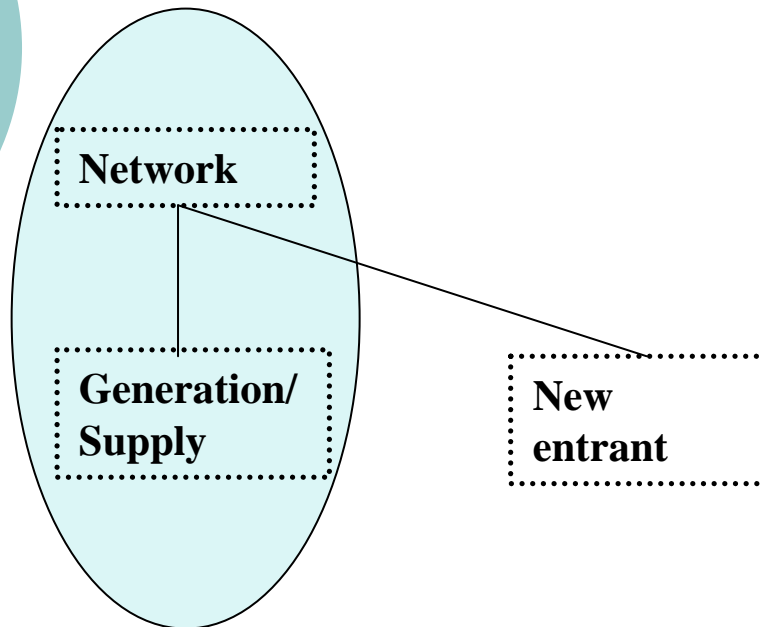
- Increase network costs
 - In particular those cost that are internal transfers
 - Buy balancing services from yourself at high prices
 - Make sure imbalances are very costly
 - Lease the network from yourself at high prices
 - Buy service and maintenance from yourself at high prices
- Give yourself rebates
 - Volume discounts
 - Book almost all the capacity long term and give yourself a rebate for booking long term

How to raise rivals cost 3



- Take the opportunity to extract information about competition.
- Make rules that third parties must give detailed informations about the contract, including identity of the customer in order to apply for network access.
- Make sure application procedure is delayed sufficiently to deploy your own sales team.

How to raise rivals cost 4



- Keep capacity scarce
- Do not invest in new capacity
 - Gas: In particular entry capacity from competing sources of gas
 - Electricity: Do not interconnect (too much) the grid with neighbors. In particular low-cost neighbours.
- Enforce a 'truce' with neighbors by co-ownership and co-control

Horizontal concern

- Ability and incentive to withdraw capacity to cause higher prices exist for firms with large market share.
 - COMP/39.388 - German electricity wholesale market
 - *[Preliminary finding of abuse:]...First, as a wholesaler on the electricity market, by deliberately not offering for sale the production of certain power plants that was available and that it would have been economically rational to sell, with a view to raising prices.*

Press release 26/11/2008
 - [M.5224](#) - EDF / BRITISH ENERGY
 - *"The proposed transaction as originally notified raises serious doubts as to its compatibility with the common market as regards ... the wholesale electricity market (specifically the potential for the new entity to ..withdraw capacity in order to benefit from raised prices...)." Par 7 of the 6 (2) Decision*
- Horizontal concerns arise relatively early in electricity
 - Inelastic demand. Fixed short term supply capacity, etc.
 - Backed up by models

Vertical concern

COMP/39.402 - RWE gas foreclosure

" These suspected obstacles take the form of high prices charged for access to gas networks operated by RWE Transportnetz Gas GmbH (RWE's transmission system operator or TSO), inflation of RWE TSO's costs"

Press release 11/05/2007 announcing the opening of procedures

M.3868 DONG/Elsam/E2/...

- DONG:
 - Dominant supplier of gas
 - Only owner of storage facilities, subject to regulation (Negotiated Third Party Access)
- Elsam and E2
 - Dominant producers of electricity
 - Gas used as input, but generators could run on different fuels (coal, wood-pellets etc.)
- Concern:
 - Merger would make gas entry more difficult because the flexible electricity production was a form of virtual storage, hence a 'substitute' for real storage.

Merger control meets regulation

- *“In regard to storage, DONG’s market power is limited by the boundaries of competition law and by the regulatory supervision exercised by the Danish authorities.”*
- *“However, the Commission’s investigation has shown that the current legal framework and regulatory regime does not prevent all exercise of market power by DONG, nor would it prevent increased storage costs for competitors to DONG after the merger.”*
- Remedy: divestiture of storage.

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