

Ex ante competition promotion

Merger control & regulation
in the Dutch energy market

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Activities of the NMa regarding energy sector

MERGER CONTROL & ANTITRUST

Competition Department

- **assessment of mergers (e.g. Nuon-Essent 2007)**
- **antitrust analysis (abuse of dominant position?)**

(only ad hoc interaction with industry)

REGULATION

Office of Energy Regulation

- **regulation of networks**
- **promoting competition in upstream and downstream markets**

(frequent interaction with industry)

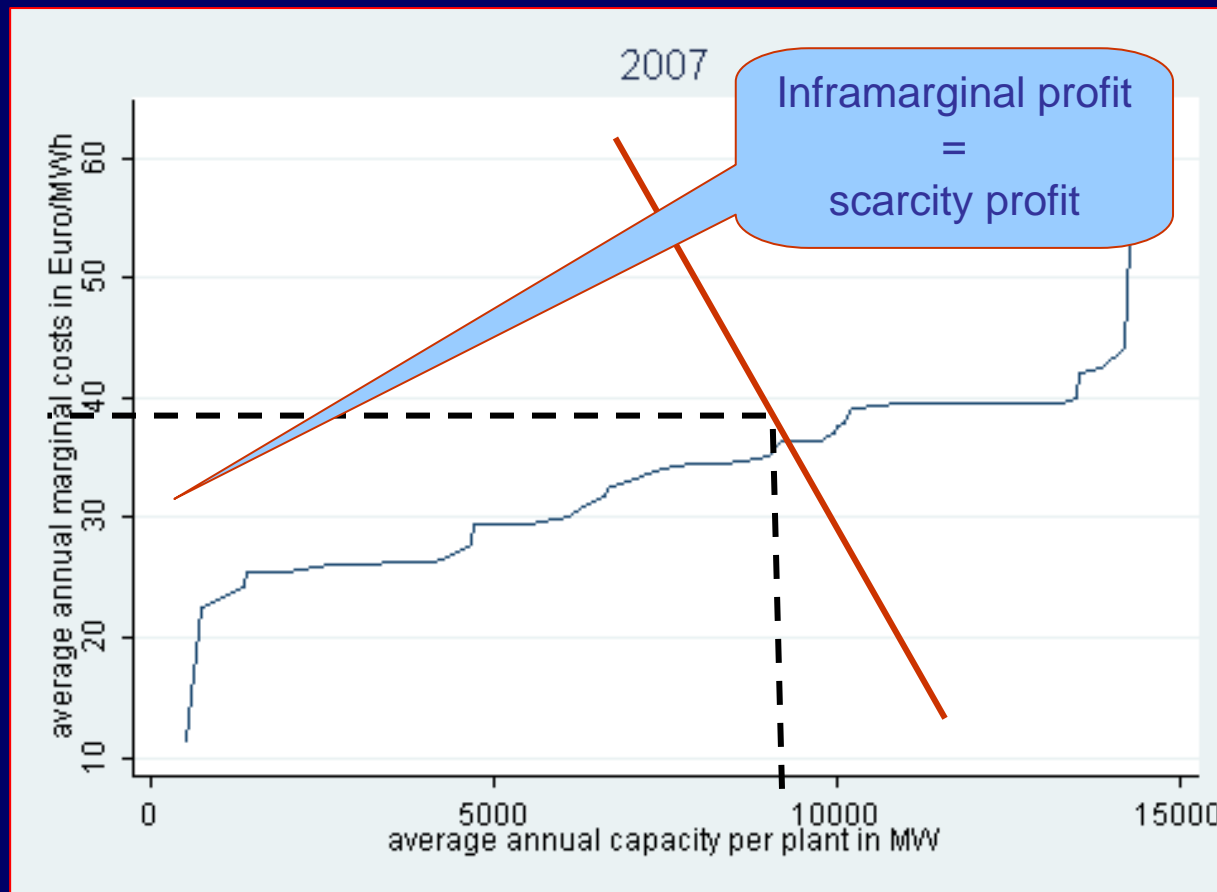
Cooperation between divisions, e.g.:
use of monitor data in merger cases (e.g. Nuon-Essent)
participation in antitrust research by EK employees

The electricity market: what is the problem?

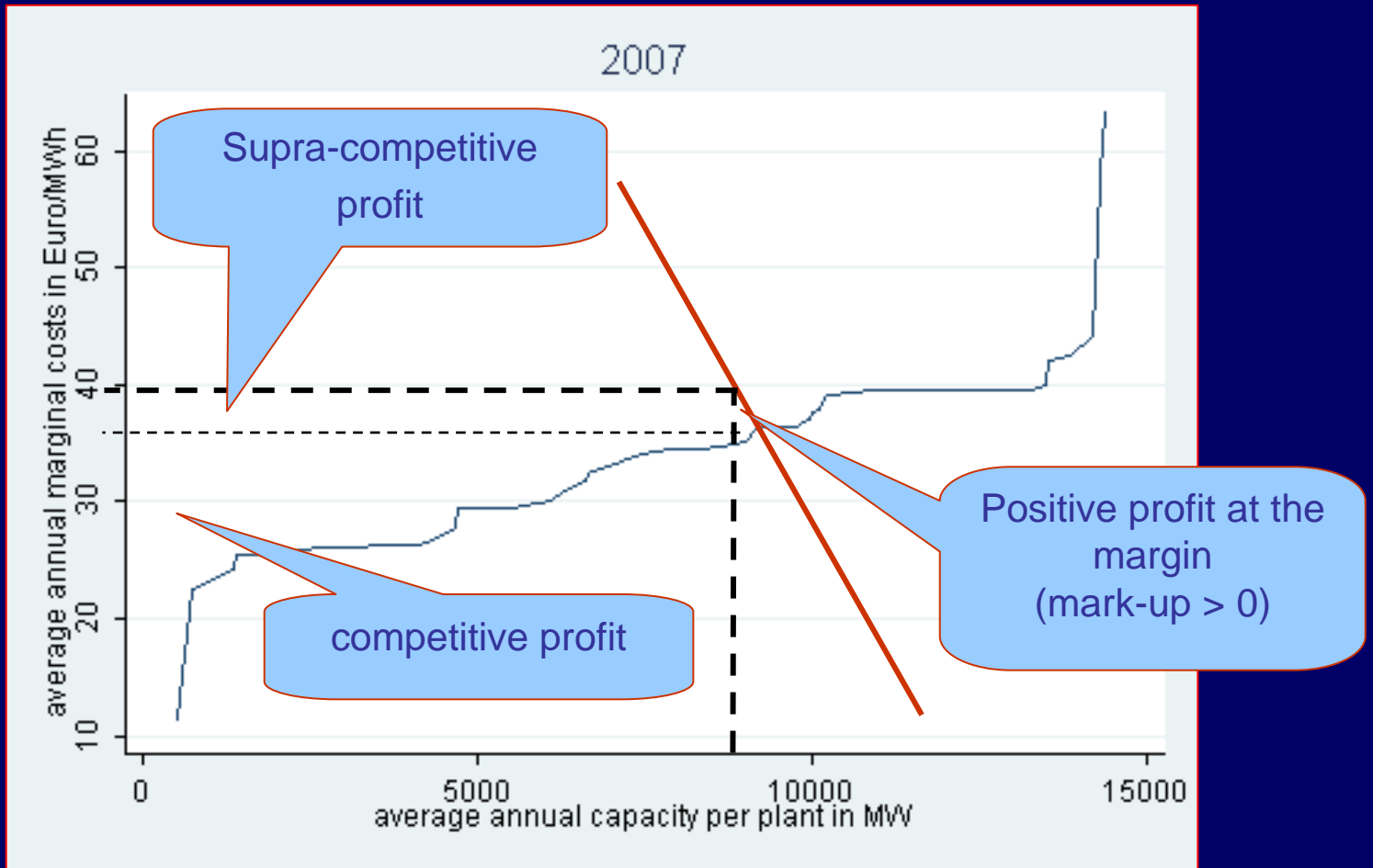
European Commission sector inquiry:

1. Market concentration is too high; future mergers will be carefully analysed (*merger control*)
2. High risk of collusion and abuse of dominance (*anti-trust*)
3. Integration of national markets is hindered by lack of investments in cross-border capacity by (vertically integrated) firms as well as by inefficient use of existing networks (*regulation*)

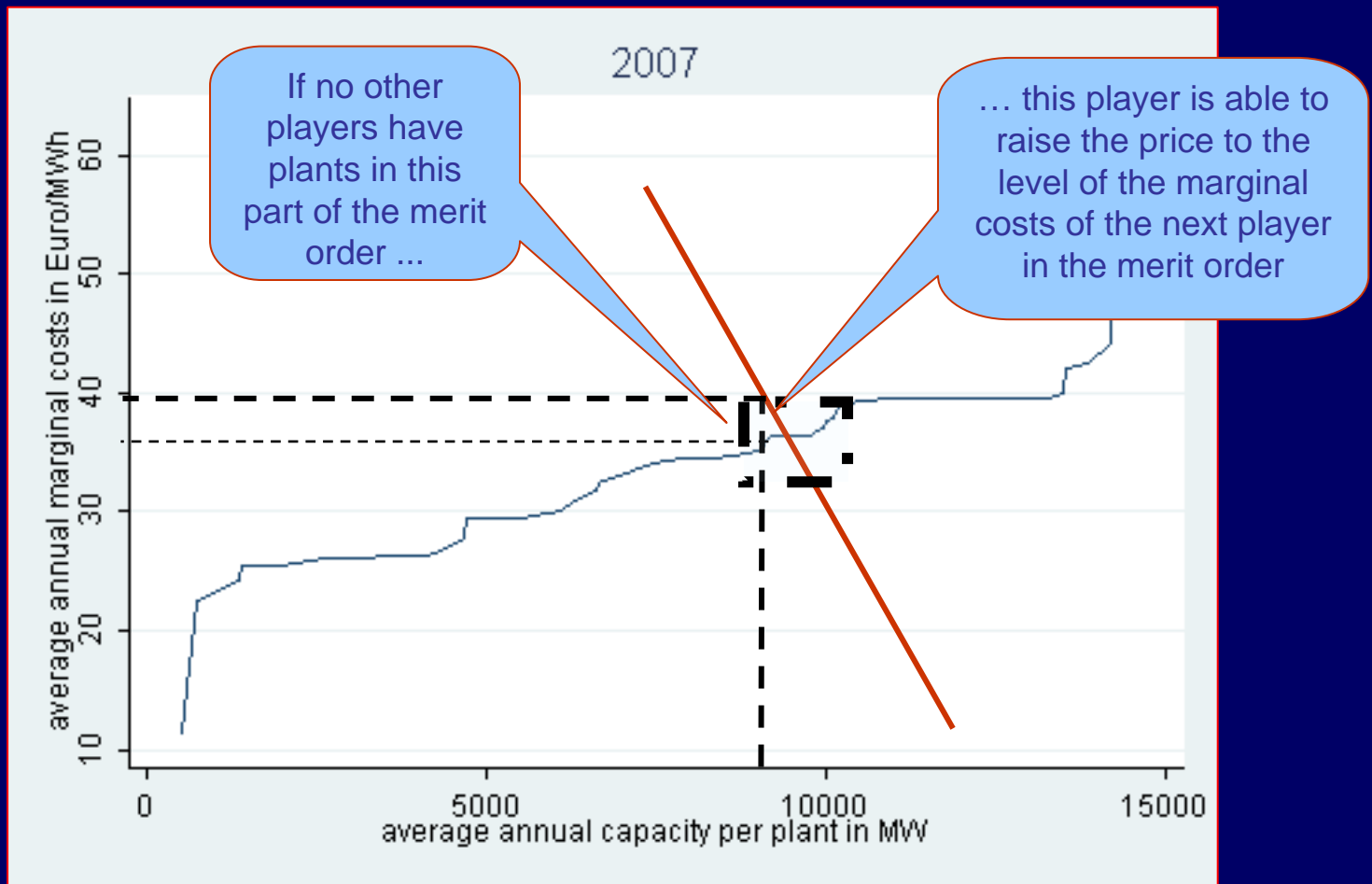
Fixed supply plus volatility in demand creates temporary scarcity.
Scarcity results in inframarginal profits, which are (partly) needed to recoup fixed costs.



Use of market power results in positive mark-up

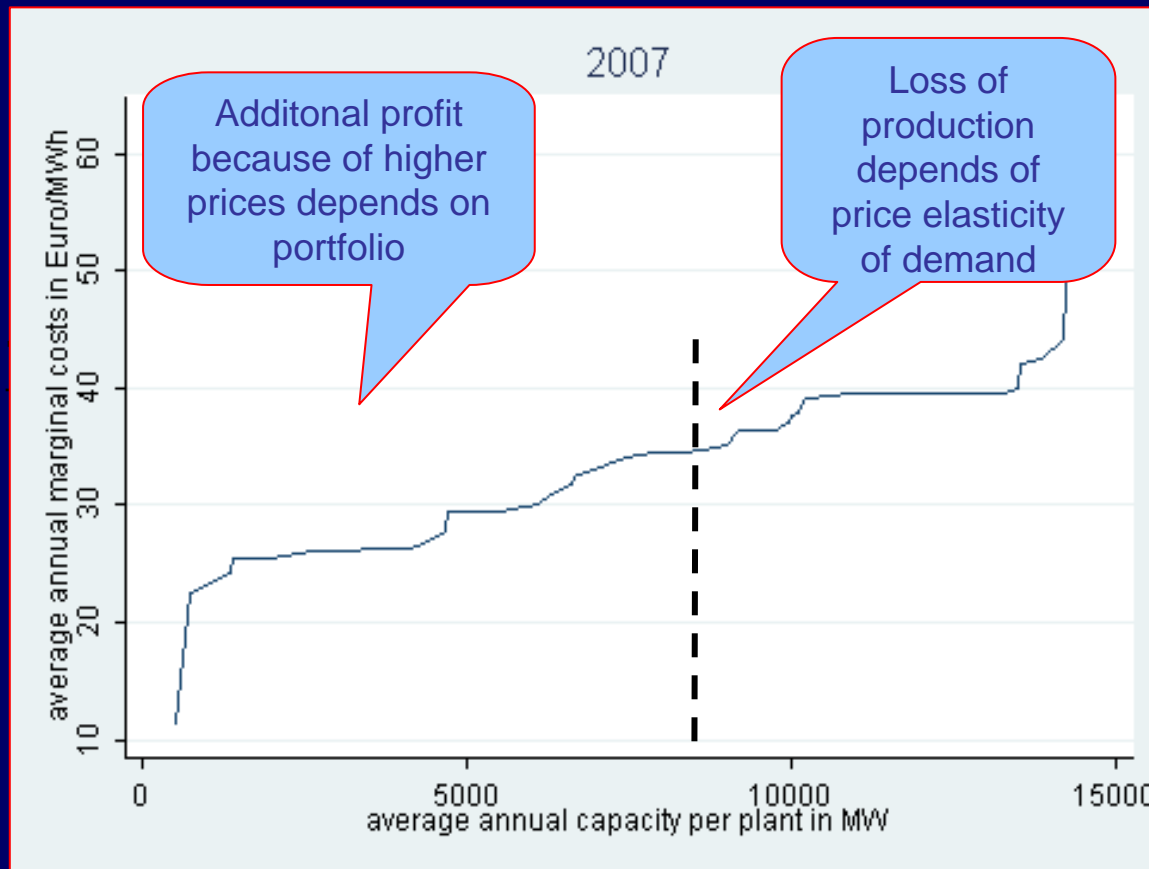


Possibility to use market power depends on position within merit order



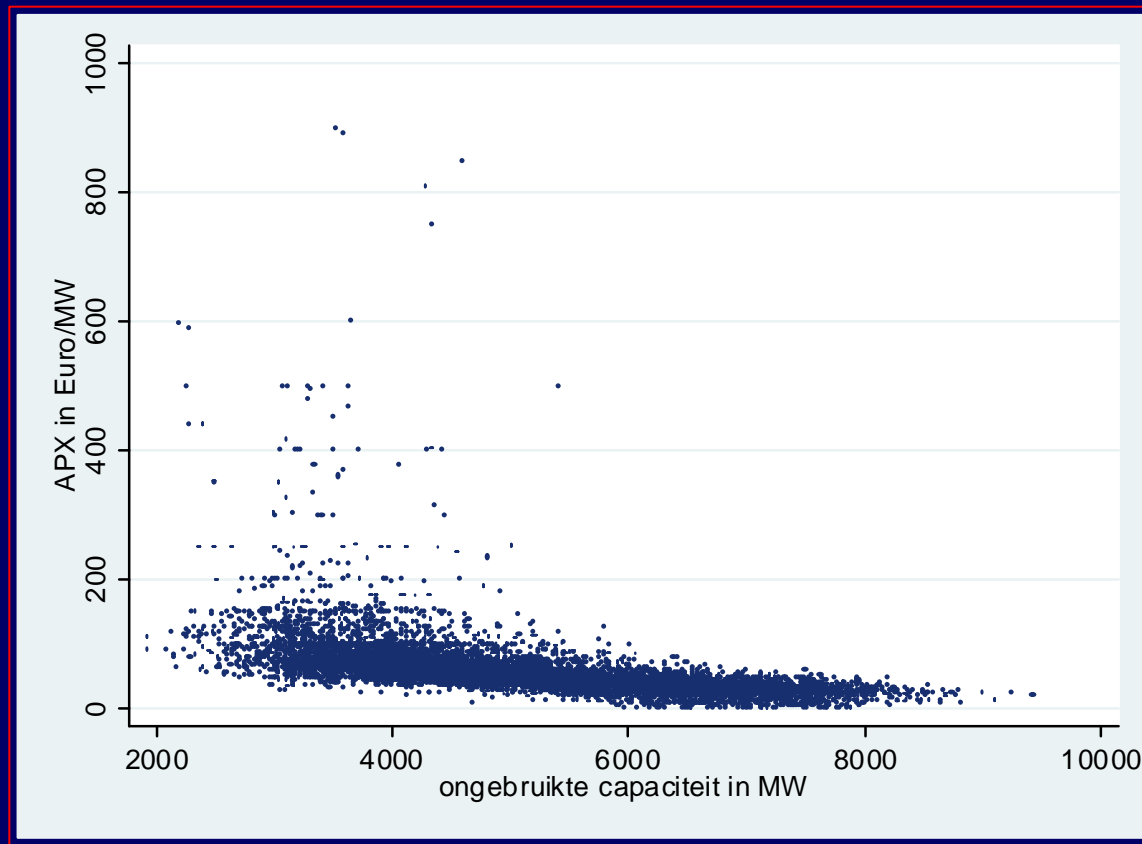
Whether players with market power actually use this power depends on their **incentives**

(trade off between higher profit due to higher prices vs. lower profit due to less production)

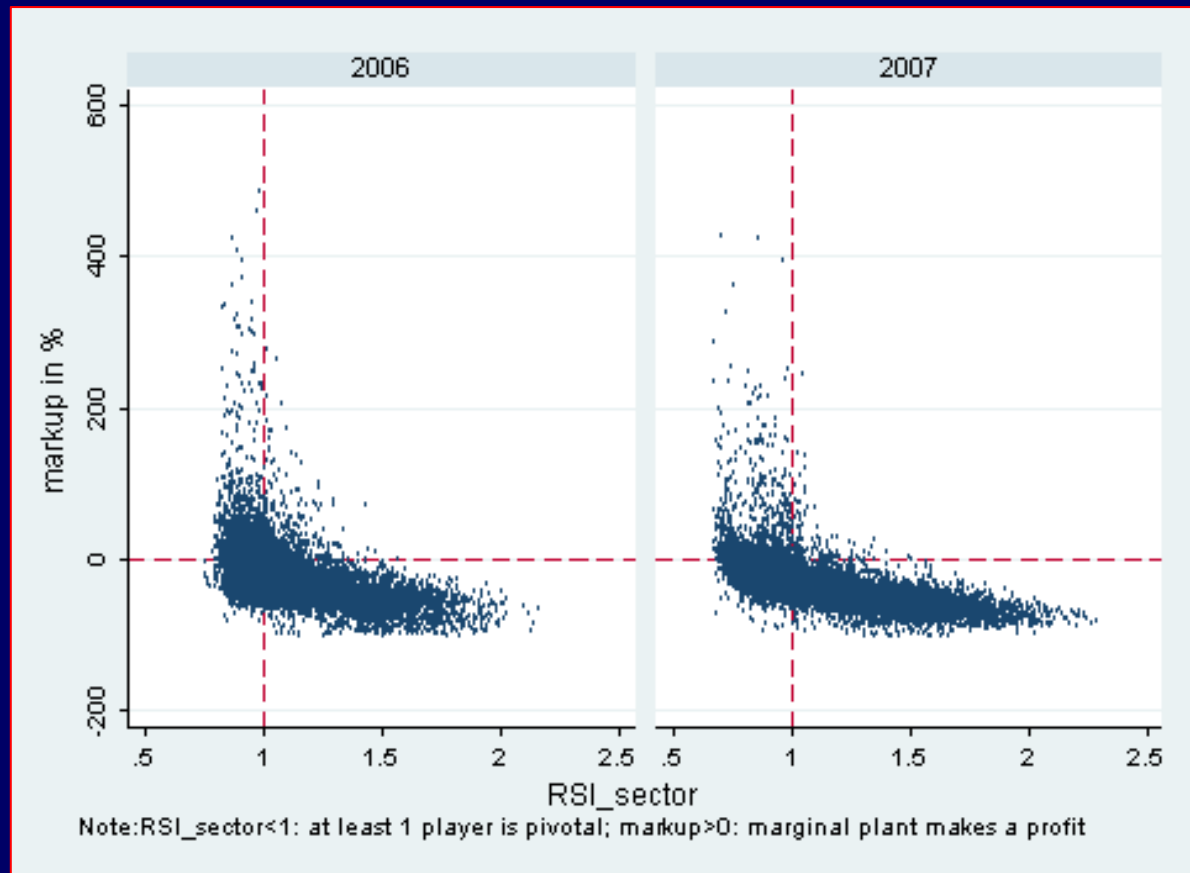


Scarcity and electricity price:

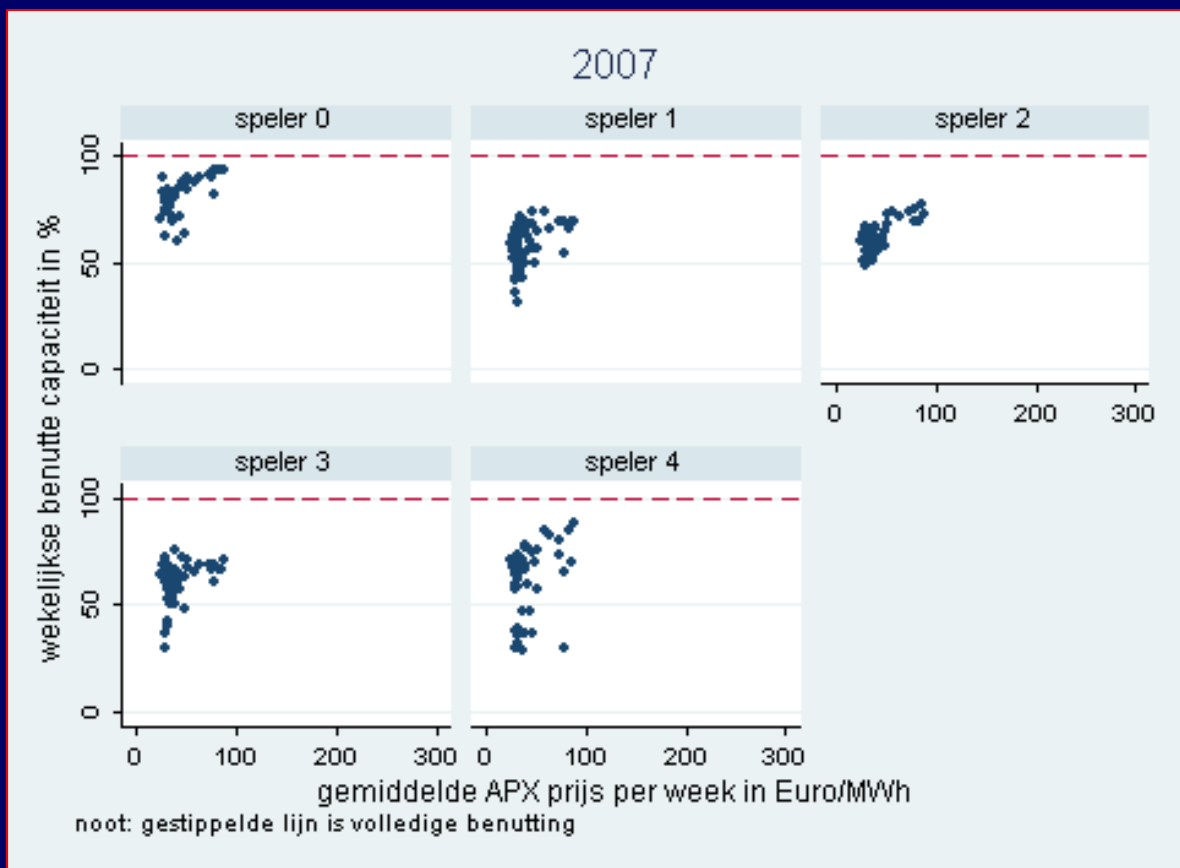
- *unused capacity strongly varies from hour to hour ...*
- *electricity prices spikes even when sufficient capacity is available ...*



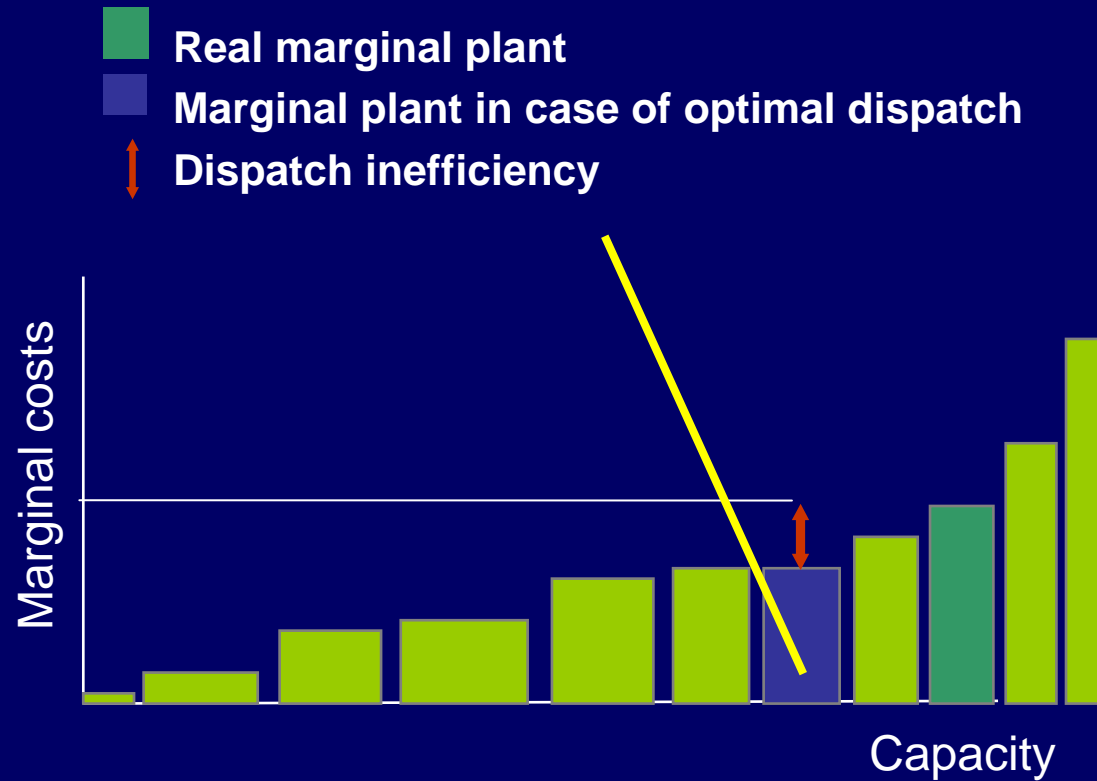
Possibility to use market power: **Residual Supply Index (RSI)**
strong relationship between market power and market results



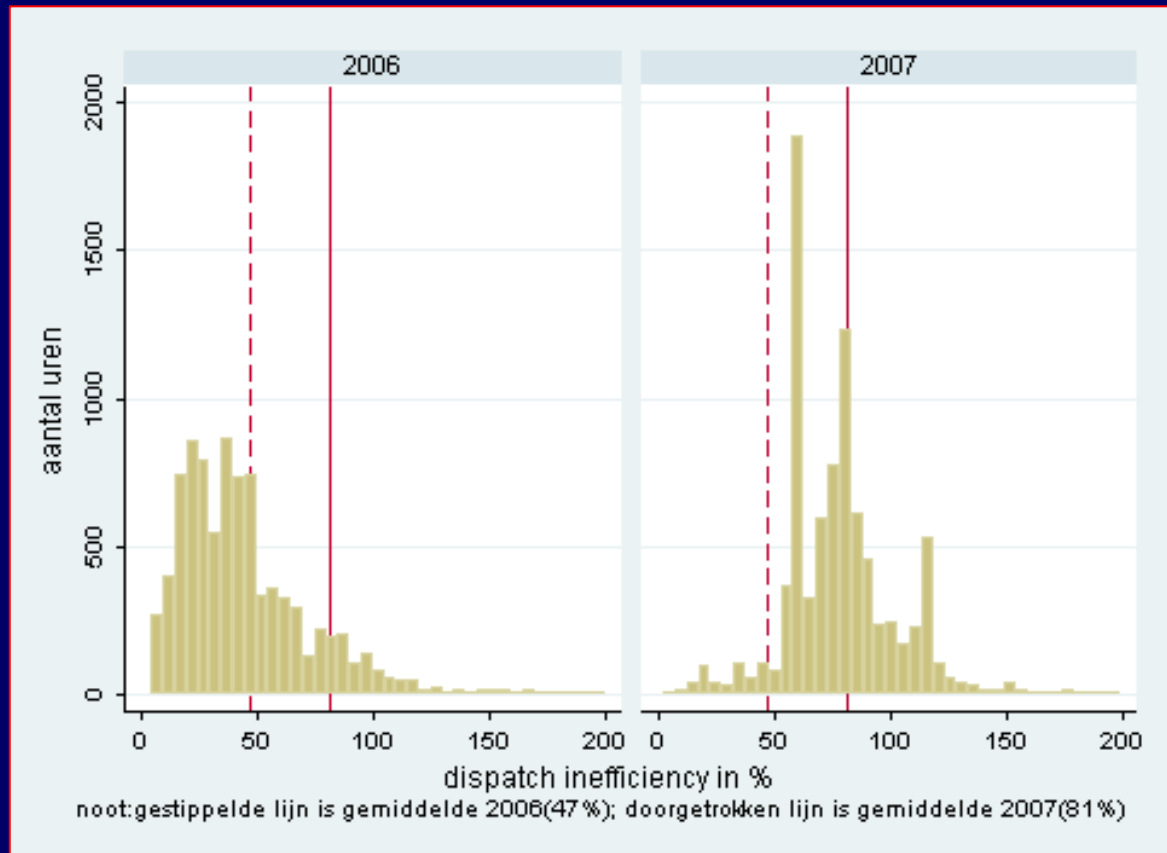
Utilisation of capacity:
even if prices stay high, several players do not fully utilise capacity ...



Inefficient dispatch *might* indicate withholding



Dispatch inefficiency varies strongly



Merger control test

Significant impediment of competition
on the Dutch market or a part thereof,
especially through creation or strengthening
of a dominant position

Assessment significant impediment to competition

- Market share
- Size/number of competitors
- Competitive pressure from other sectors
- Buyers' power
- Barriers to entry
- Efficiency advantages

Remedies

- In the event of competition problem: prohibition or remedies
- Remedies must actually solve problem
- Preference for structural remedies as opposed to behavioural remedies
- Generally divestiture
 - Enforceable
 - Viable
 - Actual competitor

Merger case: Nuon –Essent (only 1st phase)

- Traditional indicators:
 - market shares + HHI
- Sector specific indicators:
 - PSI / RSI
- Simulation models
 - SFE

Relevant product markets

- Production and wholesale electricity
- Supply of electricity/gas to consumers
- Balancing market
- Wholesale gas
- Flexibility services
- Remaining markets

Relevant geographical markets

- Wholesale market electricity
 - Peak hours: national plus effectively available interconnection capacity Germany and Belgium
- Retail markets (E + G): national
 - Attract customers on national scale
 - Small price differences between regions, conditions well-balanced
 - Significant price differences between countries
 - Entry possibilities?

Effects wholesale market electricity

Unilateral effects?

- Increase of prices due to merger combination
 - Market shares and HHI (capacity & volume)
 - PSI (RSI)
 - (additional) simulation models

Co-ordinated effects?

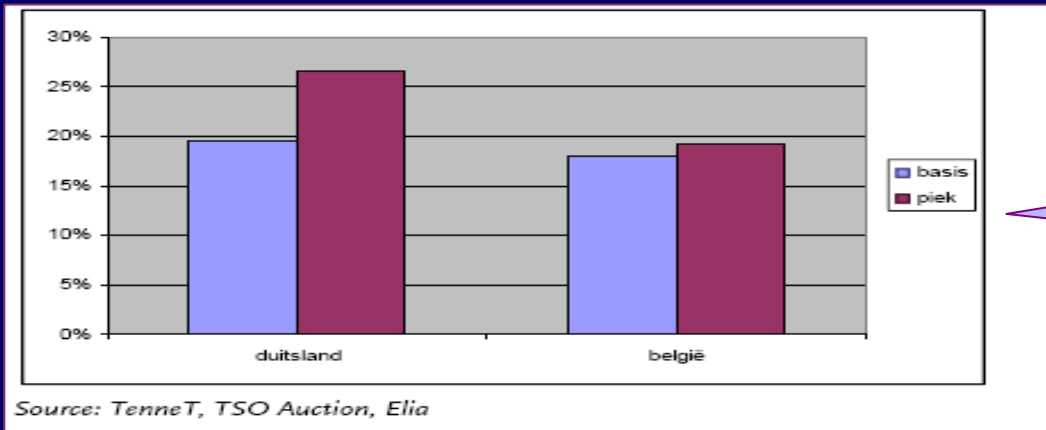
- Price increases by Nuon-Essent combined with Electrabel

Regulation:

One cause of the high concentration is limited European integration

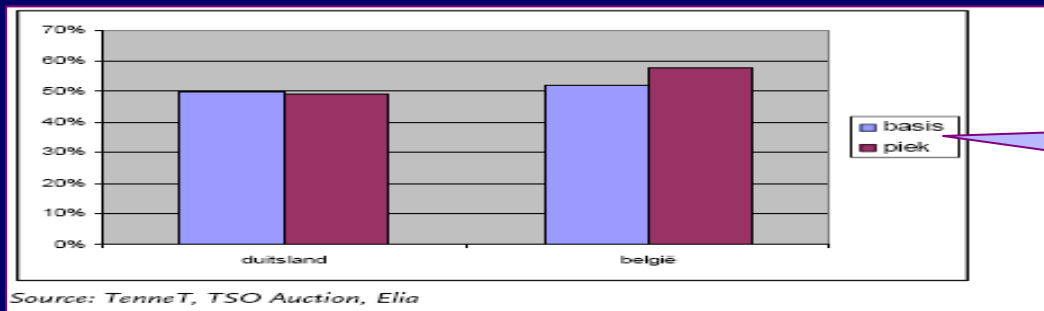
Dutch market not fully integrated with neighbour markets (differences in prices caused by shortage of available transmission capacity

about 20% of hours is fully utilised



Insufficient
investments in
capacity

about 50% of hours is unterutilised (while prices are different)



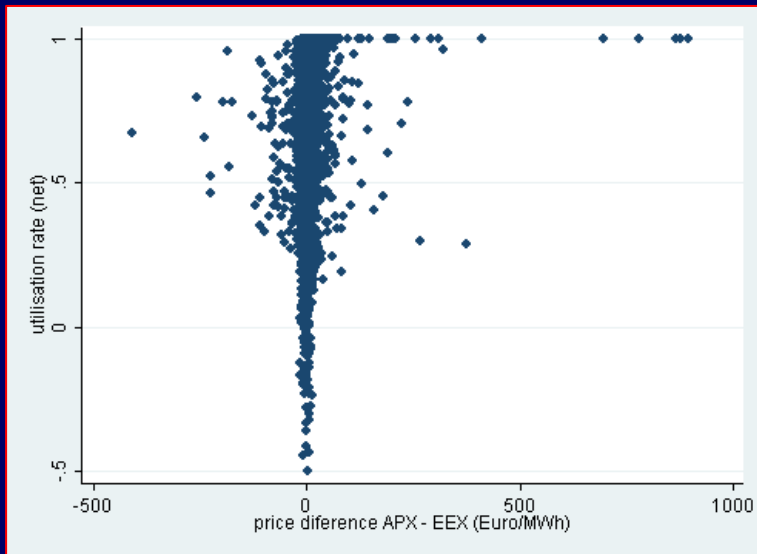
Inefficient
allocation of
capacity

Regulation:

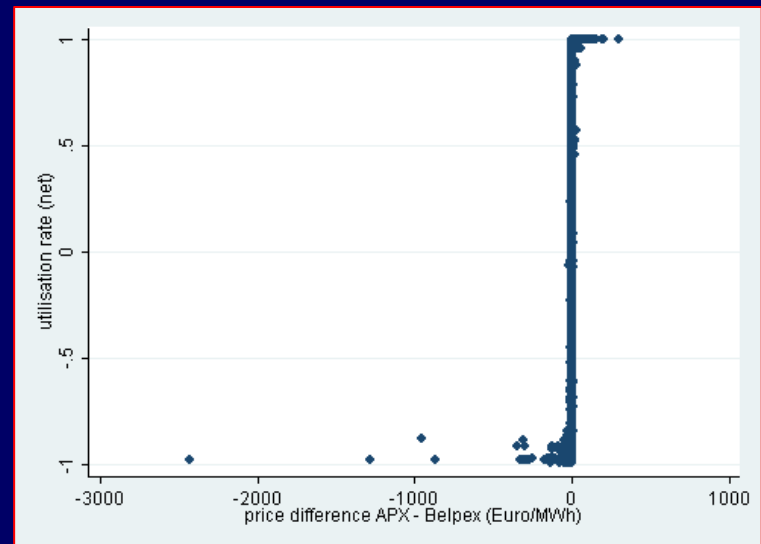
allocation cross-border infrastructure is inefficient

Utilisation ratio of cross-border capacity in relation to differences in prices

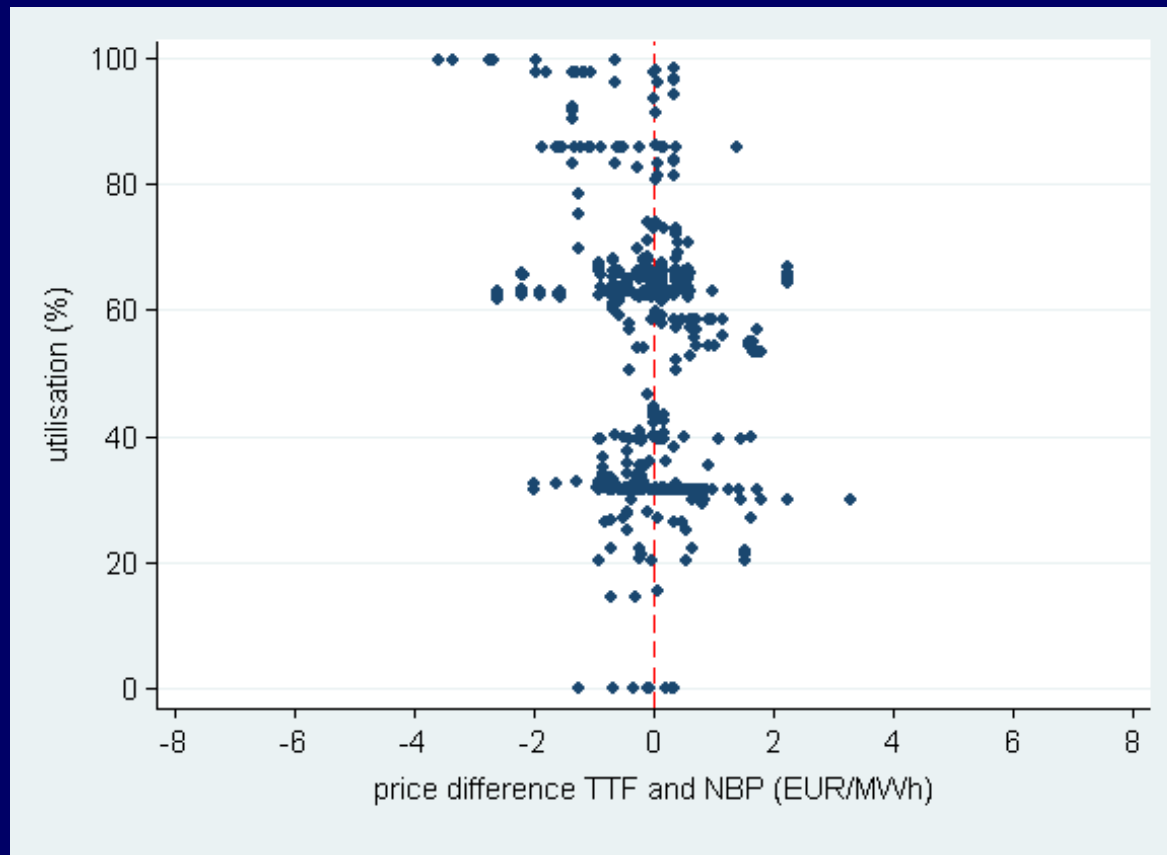
Netherlands - Germany



Netherlands – Belgium



Same applies to **gas**: relation between price difference TTF-NBP and utilisation of UK border capacity



Conclusions

1. Antitrust:

potentially effective, but not easy because of problems of defining dominant position and providing sufficient evidence of abuse

2. Merger policy:

effective in preventing further deterioration of competition, but ineffective in improving current situation

3. Regulation:

relatively easy to take measures, but those measures are mostly directed at structure (not at conduct)

4. The market itself:

effective and efficient, but lead time can be long