



Promoting Competition in Energy Markets:

Regulation and Merger Control



INTERNATIONAL

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Competition policy in the energy sector

Key issues in regulation

- **Sector inquiry identified a number of common problems:**
 - Market power afforded by TSO ownership in the context of high concentration levels
 - More difficult upstream and downstream entry
 - Lack of investment in interconnection that could facilitate cross-border competition
- **Need for new infrastructure raises challenges:**
 - **Goals:** security of supply; enhanced competition; lower carbon intensity
 - **Solutions:** new LNG import and gas storage facilities, generation assets, cross-border (and internal) interconnection
 - Who will (should) build it?
 - Does unbundled TSO ownership make building (and pricing benefits) more or less likely?
 - When is it necessary to offer exemption from TPA to give the right incentives to build?
- **High energy prices drive political concern over retail pricing:**
 - UK regulator (and parliamentary committee) engaged in detailed investigation
 - Significant concerns over *relative* pricing: but is diminished price discrimination good for customers on average?

European Energy Mergers

Selected case studies

Merger	Horizontal overlap?	Vertical overlap?	Potential entrant?	Cleared?
<i>Nuon/Reliant (2003)*</i>	Power generation	—	—	Yes with remedies
<i>Eni/EDP/GDP (2004)</i>	—	Gas import/storage and power generation	Generation Retail	No
<i>E.ON/MOL (2005)</i>	—	Gas import and power generation	—	Yes with remedies
<i>DONG/Elsam/E2 (2006)</i>	—	Gas import/storage and power generation	Gas w/sale Retail	Yes with remedies
<i>GDF/Suez (2006)</i>	Gas w/sale (BE, FR) District heating (FR)	Gas import/storage and power generation (BE)	—	Yes with remedies
<i>Essent/Nuon (2007)*</i>	Power generation Retail	—	—	Abandoned
<i>EDF/BE (2008)</i>	Power generation	Power generation and electricity retail	New nuclear	Yes with remedies

* indicates NMa Decisions: all other cases are European Commission jurisdiction

— indicates no issue or more limited concerns than those listed

Key issues in merger regulation

Dealing with cross-border and vertical mergers

- **To what extent is vertical integration beneficial?**
 - Are there efficiency gains and/or likely foreclosure of (potential) rivals?
 - How should liquidity concerns be addressed in this framework?
- **How should cross-border deals be assessed?**
 - Lose the best placed potential entrant to provide real competition – or one of many?
 - How does horizontal concentration impact across congested connections?
- **Dealing with direct horizontal overlaps**
- **Empirical techniques can often be used:**
 - Complexity of markets (getting energy to where/when it is needed) requires significant data:
 - Data on flows is needed to run national networks and interconnection
 - Traded markets are used: price signals to determine which assets produce when
 - These data also allow the implementation of more sophisticated economic analysis
- **Interaction of merger control and regulatory goals?**
 - Can (and should) merger control be used to do *better* than the *status quo ante*?
 - Trading off e.g. greater chance of new infrastructure being built versus ownership by a firm with market power

Our speakers

Experience from regulation and industry, gas and power

- **Claes Bengtsson**, DG Competition
 - Recently joined the Cabinet of Neelie Kroes
 - Previously a senior economist in the CET and Head of Unit at the Danish Ministry of Finance
- **Juan José Alba Rios**, Endesa
 - In charge of regulatory affairs in Spain and Portugal
 - Previously Managing Director of the European Trading Unit
- **Paul Hallas**, Centrica Energy
 - Director of Gas Supplies
 - Previously Head of Upstream Regulatory Affairs
- **Dennis Hesseling**, NMa
 - Head of Network Sectors and Media Unit
 - Involved in assessment of abortive Essent/Nuon merger and broader competition assessments of the Dutch energy sector