

Preface

Legal obstacles and limits to market integration and market conduct in the European energy markets

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On 10 January 2007 the Commission published the results of a sector inquiry carried out by my services in close cooperation with the directorate general for transport and energy. The results were far from positive. European gas and electricity markets do not function properly and the report identifies a number of causes for this disappointing reality. Concentration levels remain high and interconnection levels low in spite of past liberalisation efforts. Other causes include discriminatory or suboptimal use of infrastructures and vertical agreements limiting market liquidity. These latter causes may be caught by the Community competition rules and I have made clear on many occasions that I will prosecute and sanction unilateral and concerted practices by market players that hamper the creation of competitive and integrated energy markets in Europe.

However, antitrust enforcement is only one of the tools at the Commission's disposal to make European energy markets work. The Commission also uses its legislative powers to achieve this aim. On 19 September 2007, the Commission proposed a wide range of new legislative measures calling, inter alia, for effective unbundling, the creation of an agency for the cooperation of energy regulators and the strengthening of the powers and independence of regulators. As regards unbundling, the sector inquiry report has shown in particular that effective competition and market integration will not materialise as long as vertically integrated transmission network operators have the ability to use their networks to favour the interests of affiliated supply companies when they decide about the use, maintenance, development, expansion and interconnection of their network activities. Further unbundling is required to deal effectively with this inherent conflict of interest stemming from vertical integration and legislative measures are a far more efficient tool to deal with this than a case by case application of antitrust rules.

The Commission acknowledges that its proposals are far reaching. However, the best way to deal with a structural problem is to apply a structural solution and our legal experts have concluded that our proposals are fully in line with European primary law. This does not mean, however, that we should not continue to discuss these issues. I therefore welcome the contribution of the European Energy Institute to this debate, even if I disagree with the positions taken by Prof. Säcker, Prof. Pielow and Dr. Ehlers in their articles on unbundling for this copy of the European Review of Energy Markets.

Finally, irrespective of the outcome of the political discussions within the Council and Parliament on the proposed legislative package, I will continue to rigorously enforce competition rules. My services are actively investigating a number of cases that will soon reach a decisive stage. I am convinced that these will further fuel interdisciplinary debate amongst the members of the EEI and look forward to their contributions.