

Energy sector competition inquiry – Commissioner Kroes’ presentation to Council 1st December

European Commissioner for Competition Neelie Kroes presented the first findings of the Commission’s sector inquiry into the gas and electricity markets to the EU’s Council of Energy and Transport Ministers in Brussels in 1st December. In particular, Commissioner Kroes made the following remarks:

“Following the recent discussions at Hampton Court, we now need to grasp the opportunity and work together in a concrete manner. National authorities and regulators have very important roles in ensuring competitive markets, and we are working in close co-operation. At the same time, many issues need to be tackled at European level in order to be successfully resolved.

“In this context, competition rules have a key role to play in protecting the European consumers. Antitrust enforcement, merger policy and state aid control thus complement the regulatory liberalisation.

“The first results of the inquiry highlight worrying distortions of competition on EU energy markets. The main issues can be categorised into five headings:

(1) Concentration and market power

“The gas and electricity markets in many Member States are highly concentrated. In gas, the incumbents remain dominant in most of their traditional markets and largely control access to gas imports through long term contracts. And, while the level of concentration in electricity generation varies between Member States, the level of incumbent market power has remained high - with generators able to utilise capacity in a way that affects prices.

(2) Vertical foreclosure

“New entrants find the markets largely tied up in advance. In particular, they suffer from a lack of liquidity on the markets caused by vertical integration and long-term contracts. Gas incumbents hardly trade gas on open markets at all.

“Systemic, inadequate unbundling between network and supply activities is perceived by many entrants as a major obstacle, with network operators allegedly favouring their related supply companies.

(3) Lack of market integration

“Both gas and electricity markets remain largely segmented along national borders. Given the weak competition at the national level, the lack of cross-border trade is of a particular concern.

“For example, most capacity on gas transit pipes is controlled by incumbents on the basis of legacy contracts, for which a derogation from the third party access rules was provided in the 2003 gas Directive.

“In electricity, investment is insufficient to eliminate long-established bottlenecks. Even existing capacity is not always used, mainly as a result of inadequate co-ordination between transmission companies.

(4) Lack of transparency

“A majority of both electricity and gas companies believe useful, important or indispensable information is lacking, which undermines confidence in trading.

(5) Price issues

“The use of oil price indexes in gas import contracts has remained the rule: 86% of gas volumes are priced against oil. There are similarities in the indices used, so prices in contracts between different producers and suppliers move in a similar way and do not react to the supply and demand of gas in EU markets.

“Electricity consumers doubt that prices on spot and forward wholesale markets result from fair competition.

Conclusion

“Firstly, I will make use of our competition powers to ensure that the concerns we have identified can be remedied as far as possible under the existing rules.

“Secondly, I will continue the strict approach to mergers in the energy sector. We also need to consider revising the provision in EU merger rules, which stipulates that large concentrations, where all parties have more than two thirds of their EU turnover within a single Member State, are dealt with by that Member State’s authorities and not by the Commission.

“Thirdly, there needs, in the coming year, to be a major debate on the future regulatory framework for the EU energy markets. We will have to consider if implementation of the current rules is sufficient, or whether amendment of regulation is needed to ensure efficient implementation. In close cooperation with my colleague, Andris Piebalgs, we will be looking at how to limit the negative effects of current exemptions in the liberalisation directives, or of minimalist implementation. It is crucial that this is not allowed to de facto undermine the very purpose of the directives.

“We also need to reflect on the ideas recently put forward by the Council Presidency, including the establishment of a common European grid. I also noticed that most issues taken up in the Presidency paper are actually very close to the five main issues in the Sector inquiry Issues Paper.

“Please allow me to add one last caveat. Whereas competitive markets are not the only aim of energy policy, they have an essential role to play in meeting, in an efficient manner, the other policy goals. Market integration is a key issue which will develop both increased competition and a better security of supply.

“Naturally, I recognise that energy is a very specific sector. And as we do for all sectors, we take such specificities into account when shaping and applying the rules. However, if we want the liberalisation directives to deliver on their promises, our inquiry shows that we need to support them with pro-competitive action, rather than with a hands-off approach.

“In order to allow all the stakeholders to make suggestions on an appropriate way forward, we will present the preliminary report in mid-February 2006 and organise a two-months consultation period thereafter.

“I will be glad to report to you on the final findings and the results of the consultations.

“To conclude I would like to tell you that I am very aware of and I share your concern as to **“Security of Supply”**. But I would like to emphasise three issues in this respect:

First, that **“security of supply”** must not be mistaken for **“security of incumbents”**. And neither can up-stream stability be an excuse for downstream immobility.

Second, that security of supply can only be achieved through more market integration and that more market integration can only be achieved through more liberalisation and more competition.

Lastly, that any one Member State is no match to China when it comes to negotiating supply, but that an EU with integrated energy markets is able to weigh more heavily in the process.”