MERGER CONTROL IN THE EUROPEAN ENERGY MARKETS

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OVERVIEW

• Objective: analysis of the competition policy controls applied by the European Commission over mergers and acquisitions in the energy markets
  – Energy liberalization process
    • Regulatory framework
    • Merger control
  – General patterns of the decision-making process
    • Market definition
    • Competitive assessment
    • Remedies
  – Conclusion
LIBERALIZATION - Process

- **Objective:** a single and competitive energy market in Europe

- **Phase I**
  - Directive on the transit of electricity through transmission grids (90/547/EEC)
  - Directive concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (90/377/EEC)

- **Phase II**
  - Electricity Directive (96/92/EEC) and Natural Gas Directive (98/30/EEC)
    - Unbundling: accounting separation
    - Access to the network

- **Phase III**
  - EC proposal for a directive to amend the Electricity Directive and the Natural Gas Directive (03/13/01) and the Amended EC proposal for a directive to amend the Electricity Directive and the Natural Gas Directive (06/07/02)
    - Unbundling: legal separation
LIBERALIZATION - Effects

Positive

• Price reductions
• Greater choice
• Improvement of the standards of services

Negative

• Abuse of market power: large market shares/features of the utilities sector
• Increase of market power: merger activity
• Different pace in different Member States

Solutions

• Effective regulation
• Effective merger control
• Effective implementation
MERGER CONTROL

- Aim: to examine whether a merger would create a dominant position itself and whether it would impede effective competition significantly in the Common Market or in a substantial part of it.

- Decision-making process
  - Market definition
  - Competitive assessment
  - Remedies
MARKET DEFINITION

- Critical to any merger assessment

- Different energy markets
  - Oil and gas  Case No IV/M.085 - ELF/Occidental
  - Electricity and gas  Case No IV/M.493 - Tractabel/Distigaz II
ELECTRICITY MARKETS (I)

- **Generation**: the production of electricity in power stations
- **Transmission**: the transport of electricity over high tension cables
- **Distribution**: the transport of electricity over low tension local cables
- **Supply**: the delivery of electricity to the final consumer

- **Trading**: the purchase and sale of electricity and derivatives of electrical energy from and to trading companies through commodity exchanges
- **Network asset management**: the construction of new assets, the maintenance of existing assets and the operation of those assets in the most efficient manner possible
ELECTRICITY MARKETS (II)

• 1994: “Companies involved in the production, transport and distribution of electricity are essentially active on a national basis”
  Case No IV/M.493 - Tractabel/Distrigaz II

• 2002: “Internal market? Not yet” - limited flow of electricity between different Member States
  – Physical constraints such as insufficient interconnections
  – The conditions of competition differ from Member State to Member State
    • Trans-border tariffs
    • Significant price differences
    • Cross-border fee by the grid companies for the transmission of electricity
    • Differences in electricity taxation, environmental policies and other national requirements
    • Imports subject to significant seasonal variations

Case No IV/M.1659-PreussenElektra/EZH; Case No IV/M.1803-Electrabel/EPON;
Case No IV/M.1557-EDF/Louis Dreyfus; Case No IV/M.1673-VEGA/VIAG; Case
No IV/M.1853-EDF/EnBW
COMPETITIVE ASSESSMENT

• Analysis of the structure and market shares of the affected markets
  – Horizontal concerns
  – Vertical concerns
  – Overall structure of the market
  – Potential competition
HORIZONTAL CONCERNS

• An industry structure exhibiting a high degree of horizontal integration is likely to be found in a dominant position under the ECMR
  
  – overlapping activity
  
  – significant

• Most horizontal overlaps have been minimal (below 10%)
VERTICAL CONCERNS

- Vertical links between natural gas and electricity production
  Case No IV/M.931 - NESTE/IVO

- Vertical links between electricity generation and transmission
  Case No IV/M.1659 - Preussen Elektra/EZH

- Internal trading between the generation and supply businesses
  Case No IV/M.1346 - EdF/London Electricity

- Vertical integration of distribution and supply
  Case No COMP/M.1949 - Western Power Distribution/Hyder
Among the total sample of 69 concentrations reviewed over a four-year period, only in the following cases did the relevant regulatory body impose conditions on the merger:

- Cases Neste/IVO; EdF/Louis Dreyfus; VEBA/VIAG; RWE/VEW; EdF/London Electricity; Endesa/Iberdrola; EdF/EnBW; Enel/ Wind/Infostrada; Hidrocantabrico/Grupo Villar Mir/EnBW

Types

- Structural
- Behavioral

Preference of structural remedies to behavioral ones

- EC Notice on remedies
- Gencor v Commission (CFI, 1999)
REMEDIES (II): Case IV/M.1853 - EdF/EnBW

- EdF agreed
  - to make available to competitors 6,000 MW located in France – 30% of the eligible market
  - to renounce its voting rights in Compagnie Nationale du Rhone and withdraw its representative from the CNR board of directors

- EnBW divested its 24-percent shareholding in WATT
CONCLUSION

- Merger control has been used in European energy markets
  - to avoid the increase of market power ("the creation or strengthening of dominant position"), but also
  - to enhance liberalization to the extent that most remedies appear to be clear acts of liberalization

- With merger control, European and international investors have been less reluctant to provide needed capital for supporting mergers and building needed infrastructure.