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The new energy package and the perspectives for competition

Unbundling: the hurdles still to be overcome

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Introduction

Besides the ambitious low carbon and renewables goals which the EU's new energy policy embraces, the most important point is the full implementation of the energy internal market—and here of course competition and competition policy is at the core of the action.

Based on the results of the inquiries carried out over the last two years, the energy package of 19 September now presents a coherent scheme to finally take the benefits of liberalisation to the customer—in all Member States and across the EU.

The principles

The package now on the table of the European Parliament and the EU Council of Ministers builds on three principles

- The proposals build on what has been achieved by European energy liberalisation to date. We want strong national regulators and stronger regulation which we have found still very uneven during our investigations in the different Member States. This is a primary goal of the September package. We want the European gas and electricity markets to be regulated everywhere in the Union by the regulators—not by the incumbents who still dominate many markets.

- The package aims to fill the regulatory gap that we have found wherever frontiers are crossed. Hence the proposal for an Agency for the Cooperation of Energy Regulators, with clear decision making powers and with clout—not an additional layer of regulation but filling the missing link.

At the same time—and made possible by the Cooperation Agency—the package aims at a substantial strengthening of transnational TSO cooperation to get us nearer to the European copper plate and gas platform that Europe needs.

- We have to have the courage to tackle the chronic structural deficits of the sector in order to prevent our regulators from having to continue to lead an up-hill battle against conduct which results from flaws at the root of the systems. This takes me to the issue of unbundling. It cannot be that the market dominant companies control the very gates that everybody must pass through—and that our regulators have to spend their time in trying to keep gates open when the owners have any incentive to close them, or keep them as closed as possible.

The Commission has therefore requested clear structural unbundling measures at least for the transmission networks, as endorsed by the European Parliament in its ground breaking resolution of this summer.

Unbundling

The package provides for two options:

- either clear ownership separation—be it via a straight sale or a share splitting operation

or

- in derogation, entrustment of the operation and investment control to an Independent System Operator—the ISO

The first option is a clear solution, already implemented in the EU by more than half of the Member States in the electricity field and a growing number in the gas field.

The second option is intrinsically more cumbersome and needs substantial regulatory controls but it builds a bridge for those Member States and operators which still hesitate to take the whole step now.

I do not believe that I have to argue before this informed audience the detailed findings that have led to the changes proposed. We laid out last January the extensive results of the Europe-wide Sector Inquiry which we had carried out under the Commission's competition powers during 18 months.

Suffice it to recall the main features of the findings presented at the time:

- Excessive concentration;

- Vertical foreclosure—reinforcing concentration by closing the gates;

- Non-existence in practice of transfrontier competition due to foreclosure and the regulatory gap;

- Systemic lack of transparency;

- Lack of real liquidity on power and gas exchanges caused by all these effects. The chronic lack of sufficient liquidity threatens to turn some of the exchanges on the continent into an instrument of coordination, instead of clearance for competitive markets;

- And all this leading to price hikes and deep distrust into the price setting mechanisms.

This is not the market structure that is needed to support the Union's ambitious CO2 and renewables goals. For achieving those goals under acceptable conditions we need markets where energy can move freely across Europe and where users can have confidence that prices are fair.

All this is addressed now by the package, as you will easily see. Other speakers at this conference will talk about this in more detail. Let me therefore concentrate for the rest of my time on the one point which still seems controversial for some operators and Member States—unbundling.

The rationale

First, let me make one basic remark. There is no controversy on the basic principle of the Commission's proposals. Both Parliament and Council agree on the need for effective unbundling.

Let me therefore explain the motivations for the two options that the Commission has proposed—and its clear preference for full ownership unbundling, with the ISO just derogation under strict regulatory control.

Why do we need structural unbundling?

- we need structural unbundling in order to break open the vertically closed off networks and enable the necessary scale for the investments which will be needed for the future networks

- we need this in particular, in order to ready the networks for the massive entry of renewable energies—such as substantially increased use of wind power, required for achieving the Union's overall goals

- We need it to make the integration of networks across Europe possible—without risking building a huge cartel of our major incumbents and falling foul of the Union's antitrust law.

The package does not request the impossible:

- as mentioned, separation of production and networks is well tried in a large number of Member States: 14 in electricity, 7 in gas

- As established in the Commission's impact assessment preparing the package, the effect on investment of separation was positive across the board. Investments in separated networks have gone up by 100% on average relative to pre-divestiture periods.

- Unbundling has helped to contain prices for final users. Based on Eurostat prices there was an increase of prices in power by 30% for the period since 1998 in the Member States who had not unbundled, compared to 6% where market structures had been modernised

- International economic wisdom clearly supports unbundling. I point here to the OECD report on the requirements for EU economic growth published in September

- We have limited structural unbundling to the worst case situation—the transmission networks. Distribution networks will continue to work under the functional unbundling regime – though closely watched.

- The process is ring-fenced. We will not admit free riders on the restructuring from third countries. The same requirements for separation should apply to all, as foreseen in the package

- Finally, the ISO option offers an alternative—though strictly regulated—for those who feel unable to do the whole step now.

Conclusion

The package is now with the legislators—the European Parliament and the Council of Ministers. They will have the ultimate say and work out the final shape of the measures. We are confident that the package will succeed.

We need success of the package for moving the European energy market forward. We need it also in order to avoid running into a number of complex anticompetitive situations under EU antitrust law. As the Commission has made clear, current procedures under EU competition law will proceed. While the package will be weighed in the forthcoming discussions, we will do our work in the field.