THE ROLE OF EC COMPETITION POLICY IN THE LIBERALISATION OF EU ENERGY MARKETS

By Angel Tradacete, Director of Cartels, Basic Industries and Energy, Directorate General for Competition, European Commission[1]

[1] The opinions expressed in this text do not necessarily reflect the official position of the European Commission.

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I) INTRODUCTION

Public authorities in the Member States of the EU may grant special rights, in particular monopoly rights, to public or private companies in charge of the accomplishment of a mission of general economic interest in sectors such as transport, post or electricity generation. These special rights are generally the counterpart of obligations related to the carrying out of the public service mission imposed to those companies.

However, these special rights must not go beyond what is necessary for the accomplishment of the public service mission. Otherwise, they create situations, which, from the Community law viewpoint, are restrictive of competition.

Very often, these monopoly rights concern or have concerned the so-called network industries, i.e. transport, energy, telecommunications. In these sectors it can be distinguished the network (infrastructure) from the services offered through this network. While it is difficult, in general, to create a second competing infrastructure, because of investment costs and reasons of economic efficacy, it is possible and desirable to create competition conditions with regard to the services offered. This is the idea developed by the Commission, i.e. to separate the infrastructure from the commercial activities up and down stream this infrastructure. The network becomes thus a vehicle for competition. Though the exclusive property right can remain over the infrastructure, the monopolist has to give access to third parties that may wish to compete with him on the services offered through the infrastructure. This is the general principle which inspires the liberalisation Community directives.

Since the European Commission presented its ideas for a *White Paper on the Internal Energy Market* back in 1988, and specially since the introduction of its first proposal for a *Directive on Common Rules for an Internal Electricity Market* in 1992, a very lively debate has gone on both at EU level and in the national capitals of the Member States. The ideas launched by the Commission and the subsequent debate have crystallised into two Directives liberalising the electricity and the natural gas markets.

As a result of the Directives, the electricity markets of the Community have been opened up for competition since 19 February 1999. More than 66% of EC demand for electricity has been set free to shop around in the Community for supplies. The gas markets will follow in August this year. Expectations are that 80% of EC demand for gas will become free in 2000. The degree of market opening is a great success if compared with the scepticism voiced at the time of the adoption of the Directives.

The Council decided in 1996 and 1998 that market opening should be 26% for electricity and 20% for gas, which shall gradually increase over a period of 10 years without fixing a date for full opening of markets. However, Member States have gone beyond the minimum open requirement of the Council when implementing the electricity directive. It looks as if they will do the same for gas. This has created certain dynamics, which have been recently confirmed in the European Council in Lisbon on 23-24 March, where acceleration of the process has been encouraged.

Also in France, above which big question marks existed until recently has eventually transposed the electricity directive by internal law. The implementing decrees are still to be adopted, in principle before summer this year. In this respect, the French State Secretary for Industry has made optimistic declarations whereby the 3rd step of market opening could be earlier than required by the Directive.

The liberalisation of an industry is always an evolving process. It starts with the lifting of the monopoly rights of incumbent operators. This triggers the transformation of the industry. Monopoly supply structures give way to competitive structures and national markets grow into wider markets, which may eventually become Community-wide. The experience with the liberalisation of the European telecommunications and transport industry is likely to be repeated in the European electricity and gas industry.

The transformation of industries with monopolistic structures causes a number of competition problems. This is due to the fact that former supply monopolists have an economic incentive to keep their dominant position as long as it is possible. The competition issues arising from liberalisation are addressed by EC Competition Policy and law. EC Competition Policy complements the Community's internal market and energy policy. Whereas the latter abolishes legal obstacle thus lifting State barriers, EC Competition Policy mainly removes factual obstacles to competition, so to avoid that State barriers are replaced by private barriers having the same effect.

Therefore, the general objective of the European Commission when enforcing the Competition rules is that to complement the liberalisation Directives and provide a level playing field through the use of the competition instruments at hand, i.e. anti-trust rules (Articles 81, 82 and 86 of the Treaty), Merger Regulation and state aid rules (Articles 87 and 88 of the Treaty). Accordingly, Competition Policy in the energy sector aims at preventing private arrangements or practices limiting emerging competition or foreclosing national markets against new entrants.

In the rest of my presentation I will deal with the following Competition issues in the framework of the electricity industry, since liberalisation is more advanced there that in the gas industry:

* Problems related to the network
* Practices restricting the free choice of consumers to choose their supplier
* Co-operation agreements and mergers between suppliers
* The application of State Aid Policy to stranded costs
* Co-operation of the Commission with National Regulators

II) COMPETITION ISSUES RELATED TO THE NETWORK

The most complex and interesting competition issues of the liberalisation of the electricity industry arise around the network, which constitutes what economists call a "natural monopoly" whose doubling is normally not economical.

This means in terms of competition law that transmission system operators (TSOs) are regularly enjoying a dominant position in the geographic area covered by their grid. Electricity suppliers must have therefore non-discriminatory access to the grid at fair prices in order to be able to compete effectively against each other for customers, as required by the Electricity Directive.

II-1) NON-DISCRIMINATORY ACCESS TO THE GRID

The Electricity Directive contains provisions aimed at introducing full and complete competition across the EU for all new generation capacity. Member States can choose between an authorisation or a tendering procedure when assessing the merits for potential new producers. Most Member States have opted for the authorisation regime as this is seen to be the most

effective and transparent mechanism to open the generation market to competition.

The directive also provides for a gradual opening up of the supply market, making consumers eligible to choose their supplier freely. Some Member States (e.g. German, Sweden, Finland, and UK) have however chosen to liberalise their market 100% from the start.

Both generators and customers need access to the grid. Due to the vertical integration of power generation with grid operations in the European electricity industry, no market for the provision of transmission of electricity existed in the past. Liberalisation calls for the emergence of transmission services and the development of a transmission price.

To enable the transport of electricity from producers to eligible customers, the Directive requires TSOs to provide access to their lines to third parties.

Whilst the Directive left Member States a choice between two different approaches, single buyer or third party access (TPA), all Member States have chosen the TPA approach. According to TPA, tariffs for grid access are either negotiated by the user with the TSO who publishes indicative prices for transparency, or, under the regulated TPA regime, prices are fixed by the competent authorities and published. In either case, access can only be refused in some clearly defined cases such as lack of capacity.

In order to prevent TSOs from discriminating in favour of their own supply business when granting grid access, the Directive has required Member States to ensure that the TSO side of the business is separated from all other activities. In particular, it is required to unbundle management as well as accounts and not to pass on confidential information. Most Member States have unbundled in accordance with the Directive. Sweden and the UK went further by setting up economically and legally fully independent TSOs.

II-2 TRANSMISSION PRICING

Effective control of transmission tariffs is a priority for Community Competition Law enforcement because of the gatekeeper function of transmission. Unfair tariffs leave little scope for generator and supplier competition.

EC Competition Law does not prescribe a particular method for the calculation of prices. It only prohibits the imposition of unfair selling prices or other unfair trading conditions in accordance with Article 82 a) of the Treaty. Unfair are either predatory or excessive prices. EC Law does thus only mark the outer boundaries of permissible market conduct with regard to prices.

The issue of calculation of transmission prices arose in the past in Germany where industry Associations concluded a framework agreement setting out joint principles for the calculation of prices ("Verbändevereinbarung"). The Associations were able to do so because Germany opted for the negotiated TPA system in implementing the Electricity Directive. The framework agreement was based on a price model that was transaction and distance based. This means that a user of the network had to conclude a contract with the TSO each time a transmission shall take place. Furthermore, the price for the transmission depended, inter alia, on the distance between the location of the generation and the load. The distance component applied only to high-voltage transmissions in excess of 100 km.

Both components of the German Verbändevereinbarung I raised doubts with regard to the underlying model for calculating the transmission price. As you know, electricity supply contracts do not necessarily reflect physical flows. This is particularly true in highly meshed networks as the UCTE network is. It follows that transmission pricing should rather reflect actual physical flows than commercial operations. This does not imply however, that the transmission of electricity over longer distances is not more costly.

According to the jurisprudence of the Court, a price is unfairly high within the meaning of Article 82 of the Treaty, if it is excessive in relation to the economic value of the service provided. The excess can be determined by making a comparison between the selling price and the cost of

production. A particular method or component used in calculating prices, which lacks cost-reflectiveness may thus be regarded as unfair within the meaning of Article 82 of the Treaty, if it leads to excessive prices.

The original German framework agreement was replaced in December 1999 by the so-called Verbändevereinbarung II. The new agreement provides for a non-transaction tariff without any distance component within the newly introduced North and South German "Trading Zones". It proposes German TSOs to recover network costs through simple connection charges from network users depending, inter alia, on the electricity they consume. The price a consumer has to pay for transmission does not vary with the change of supplier within the same trading zone.

The Commission welcomes in principle the progress achieved by the Verbändevereinbarung II, which will make electricity transmission easier than under the first version of the Verbändevereinbarung.

However, the establishment of a North and a South trading zone together with the levy of an extra-transmission fee on crossing from one zone into the other or from/into Germany raises competition concerns. Indeed, this might lead to the establishment of an entry barrier around Germany and to the partitioning of the German market, thus threatening the completion of an EU-wide internal market for electricity. The envisaged system to recover the cost of long-distance transmissions appears to protect local power production and to avoid long-distance transmission of electricity, which amounts to the same.

A cross-border tarification system which applies to all exports of electricity within the Community is in the process of being developed, in the framework of the Florence Forum.

Through the Florence Forum, the European Commission, Member States, National Regulatory Authorities and the Association of European Transmission Service Operators (ETSO) gather together twice a year in close contact with representatives of electricity producers, traders, consumers and market operators, in order to make progress in the development of an internal market in electricity without undue obstacles to trade. At the last edition of the Forum on 30-31 March 2000,

discussions focused on the issue of cross border tariffication mechanisms. The issue at stake was how to arrive at an harmonised system to collect charges to cover the extra costs arising out of cross border transmissions, and how to allocate them to each TSO according to the costs incurred by each TSO.

ETSO proposed a system whereby a uniform postage stamp fee of 2 €/mwh was to be levied each time electricity was to be exported from one Member State to another. This fee should have covered the cross border transmission costs and was to be shared among the TSOs proportionally to the costs incurred by each due to the transaction.

This proposal was, however, not acceptable to the regulators, as it amounted to an export fee and as the level of the postage stamp was seen to be very high. The approach now proposed by the Commission, the Member States and the regulatory authorities amounts to the following:

- For a period of one year only (from 1st October 2000 to 30th September 2001) the TSOs will collect a certain sum and reallocate it among themselves in order to cover the expected costs occasioned by cross border transactions.

- The method by which each TSO will collect his proportion of this sum is left to Member States, but the TSOs must submit their plans to the European Commission before 15th June 2000. The Commission has to ensure that these plans do not lead to a distortion of the internal market of electricity.

- Once this system is in place, i.e. on 1st October 2000, any existing charges for cross border transactions will be abolished.

- The system proposed will be reviewed before 30th September 2001 to fine tune the cost-reflectiveness of the total amount to be raised and to achieve a greater harmonisation of the different models implemented to raise that cost.

II-3) INTERCONNECTORS CAPACITY ALLOCATION

Another important competition issue concerning networks is access to interconnectors linking Member States. Interconnectors will, in some Member States with a monopolistic supply structure, be the only source of competition for some time. Therefore, access to interconnectors is key to the success of the internal electricity market and to rendering liberalisation effective for consumer.

a) ALLOCATION METHODS

In the past, interconnectors were mainly used for security reasons, not for massive commercial trade. Access to interconnectors is becoming an issue for Competition Law because of the fact that many of these cross border lines lack sufficient capacity to carry all the electricity which producers, traders and large consumers wish to import, thereby using their new market freedom. TSOs are currently exploring various methods to allocate the available transmission capacity whenever demand exceeds supply. The most frequently applied methods are pro-rata rationing and auctions. Other possible allocation methods are “first-come-first-served” and beauty contest.

Given the market structure, with many vertically integrated companies, TSOs are often de facto the national incumbent companies, the big electricity generators. This is the case despite the requirement by the Electricity Directive of unbundling of management and accounts, which does not fully guarantee the complete independence of the TSOs.

The Directive foresees that the TSO determines the use of interconnectors on the basis of objective, published and non-discriminatory criteria. Competition Law, like in the case of transmission pricing, does not prescribe the implementation of a particular method for the allocation of transmission rights. It sets only the outer boundaries for dominant network operators within which they are free to use the method that suits their particular situation best.

Pro-rata rationing is an allocation method which can be considered compatible with competition rules, to the extent that the Court has already dealt with this method in a Decision on Article 82 of the Treaty. This method is currently applied at

several borders as well as to bottlenecks inside some Member States. It seems to work in practice as long as demand does not exceed available capacity to a too large extent. If, however, demand largely exceeds free capacity, pro-rata rationing may lead to the allocation of so little capacity that the individual transaction looses its commercial value. This unfortunate result can be avoided by the use of auctions.

The compatibility of auctions with EC Competition Law is less clear. The Commission intervened twice against tender procedures in telecommunication cases. Both cases concerned the grant of concessions for the operation of a GSM network. The Commission was opposed to the use of auctions on the grounds that the payment of a lump sum would raise the cost of entry for the new entrant and create thus a competitive disadvantage in comparison to the incumbent state-owned telecom operator which did not pay an entry fee. Both GSM cases are not easily comparable to the allocation of interconnector transmission rights. The GSM operators had to pay a fee for being allowed to enter a telecommunication market. The fee for allocation of electricity transmission rights will normally neither be of similar magnitude, nor will be the price for market entry. It will only be the price to execute one or several supply contracts.

Auctions could paradoxically incentive the TSOs to perpetuate the situation where capacity is scarce since this would be profitable for them. This will be the case if there is some link between the TSO putting out the tender and the company holding a dominant position on the import market to which bidders request to have access to. This unsatisfactory result could be counterbalanced by using the proceeds of auctions to reinforce the interconnector with the aim to eliminate the bottleneck, at least in the longer term. This would create a prospect of market entry that may even have a disciplinary effect on the pricing behaviour of the dominant supplier on the downstream electricity market.

The allocation method that might raise most doubts under EC competition rules is arguably “First-come-first-served”. This method can under certain circumstances favour former monopolists over new entrants, for instance in a situation where the dominant firm concluded long-term reservation contracts before liberalisation with the effect that newcomers are foreclosed to enter downstream electricity markets.

As to the fourth allocation method mentioned, beauty contest, a case by case analysis would be necessary depending on the concrete criteria and their actual application.

b) LONG-TERM RESERVATION CONTRACTS

Interconnectors have very often become bottlenecks because of existing long-term reservation contracts concluded by former monopolists before liberalisation. The assessment of reservation contracts under EC competition rules depends on the particular circumstances of each case. Generalisations are difficult. It may nevertheless be possible to distinguish between two extreme cases.

The first case would be a long-term contract that enabled the TSO to make the construction of the interconnector commercially possible and viable. This is very often the case for submarine cables linking two national electricity systems for the first time. Since these interconnectors obviously increase competition, at least in the long term, such long-term contracts will normally be compatible with the EC competition rules. The only issue arising in this context is for how long are the contracting parties allowed to use the new line exclusively. This will mainly depend on the period of time required to ensure the parties a proper return on their investment.

The other extreme case would be a contract for an existing interconnector through which two dominant suppliers reserve the available transmission capacity for imports into their respective supply area exclusively for themselves. This agreement would appear to fall under Article 82 of the Treaty, in particular in situations where the most likely source of competition would be the supplier on the neighbouring geographic market. The reservation contract may even be regarded as a vehicle to exclude potential competition among the two contracting parties, so that Article 81 of the Treaty may apply, too.

All other cases of long-term reservation contracts will most probably fall in between these two extreme cases. This means that a refusal to grant access has to be objectively justified in a situation where the refusal has a negative impact on competition in the downstream market for electricity. If the TSO cannot validly justify the refusal, the requested transmission has to be carried out.

III) PRACTICES RESTRICTING THE FREE CHOICE OF CONSUMERS TO CHOOSE THEIR SUPPLIER

Supply contracts between electricity suppliers and their customers have traditionally been long-term, if not indefinite, and exclusive. On competitive markets with sufficient liquidity such contracts are rather the exception than the rule, as can already be observed on the more advanced electricity markets of Sweden and the UK. It is thus very important for the liberalisation process to start, that eligible customers are actually free to switch suppliers and are not bound by long-term supply contracts, obliging them to take all their requirements from the incumbent producer.

Exclusive purchasing commitments on a long-term basis are certainly not restricting competition as such, even if frequently applied by suppliers. A dominant supplier has, however, a special responsibility not to impair emerging competition on the recently opened up electricity markets. What may be neutral for competition for smaller market participants may jeopardise competition, if applied by a dominant firm. Exclusive supply contracts on a long-term basis may create an obstacle for smaller competitors to expand their sales or for potential competitors to enter the market in question. A dominant firm is thus likely to abuse its market position within the meaning of Article 82 of the Treaty, if it ties a substantial proportion of demand by an obligation to purchase exclusively and long-term from the market leader. This constitute an abuse irrespective of whether exclusivity is stipulated without further qualification or whether it is undertaken in consideration of the grant of rebates.

Dominant electricity suppliers allow their customers sometimes that they may switch to another supplier if this is able to offer more favourable terms which the dominant firm is not willing to match ("English clause"). This clause has a discouraging effect price competition because it creates price transparency for the dominant firm and allows it to react without lowering prices at a larger scale.

IV) COOPERATION AGREEMENTS AND MERGERS BETWEEN SUPPLIERS

The opening up of markets creates new opportunities for energy companies to grow. Some may regards it as a challenge that they can only meet in co-operation with other energy providers. Their customers contribute to this development in demanding single sourcing either for

all their energy requirements or, al least, for all their requirements of a particular energy source in respect of all their locations in the Community. Liberalisation is thus leading to a restructuring of the European energy industry through co-operations and mergers. A similar increase of merger activity could be observed before in the European telecommunication and air-transport industry.

IV-1) COOPERATIONS AND MERGERS BETWEEN ELECTRICITY SUPPLIERS

Co-operation agreements and alliances between electricity suppliers are rather pro-competitive, if they allow these companies to enter new electricity markets for trading at exchanges (Sydkraft/Hew, Deo) or network services (TXU/EDF London Investments). The same is true for joint ventures or mergers with the objective to enter into new geographic markets, in particular if these are highly concentrated (Preussenelektra/EZH, Vattenfall/HEW, EDF/ESTAG,EDF/London Electricity, EDF/EDISON/ISE, ELECTRABEL/EPON, etc.). Small suppliers, e.g. municipal companies, may also co-operate in order to better compete for large industrial customers.

Mergers and co-operations between former monopolists having become direct competitors through liberalisation are more problematic, however. They create the risk of consolidating the strong market position of the parties in their former exclusive supply area. The actual and future conditions for supply competition will have to be assessed. The degree of market opening, the economic independence of TSOs and the actual conditions of TPA are important in this regard. Competing suppliers must have real opportunities to enter the supply territory of the merging or co-operating parties. If entry into the supply area of the former monopolists becomes less likely, the merger will most probably not be compatible with EC Competition Law.

Only one case has met difficulties with the Commission so far. EDF envisaged forming a joint venture for the trade of electricity with Louis Dreyfus. The French market had not been opened at the time of the notification of the operation. The conditions and terms of TPA as well as the identity of eligible customers in France were not known. EDF would have been the only trader on the French market and thus be able to gain a competitive advantage over its competitors which were barred to enter. The Commission decided that the joint venture would re-inforce its dominant position on the French electricity market under

these conditions. The operation was subsequently cleared after EDF had undertaken that would not offer trade services in France until the market is effectively open.

IV-2) COOPERATIONS AND MERGERS OF ELECTRICITY SUPPLIERS WITH OTHER ENERGY PROVIDERS

There seems to exist a trend to create companies selling electricity together with other energy sources ("multi-energy"). Companies with an established distribution network may see a competitive advantage in marketing electricity in addition to gas or other fuels. At the same time consumers with more complex energy requirements, in particular industrial customers, may wish to purchase all their energy from one single supplier.

Co-operation agreements and mergers between suppliers of different energy sources can be pro-competitive, if they lead to new market entry. However, electricity is characterised by the universality of its uses. There are some uses for which electricity is, at least potentially, substitutable with other energy sources used by households (cooking, heating, hot water) as well as by industrial operators (traction, heat). Although it is true that substitutability is not perfect, because it is very often more costly to employ electricity and different equipment may be necessary, competition problems cannot be ruled out. It will depend on the particular circumstances of each individual case whether the co-operation or merger is compatible with EC Competition Law.

Competition problems have arisen in the past when a dominant electricity producer intended to merge with a dominant gas importer and wholesaler. Gas is one of the energy sources from which electricity may be produced. It seems to offer high efficiency, flexibility, relatively low investment costs and environmental advantages. It is expected that the growth of the gas market in the next decade will to a considerable extent be driven by the use of gas as a fuel for electricity generation.

A merger between the dominant electricity supplier and the dominant gas wholesaler would thus allow the electricity supplier to gain control over the most important source of competition in electricity generation Competing electricity producers, who intend to enter a new geographic market on the basis of a gas-fired plant, would most probably have to purchase the fuel from the incumbent dominant electricity supplier. Furthermore, the dominant electricity producer would be able to influence the choice of industrial consumers whether to engage in own production of electricity or to purchase from the incumbent. The two

mergers of TRACTEBEL/DISTRIGAS and NESTE/IVO met thus the opposition of the Commission. The merger projects were only approved after the parties had undertaken to divest their industrial gas sales business to a third party.

V) APPLICATION OF STATE AID POLICY TO STRANDED COSTS

The fourth competition issue arising from liberalisation of electricity I would like to mention briefly is the application of State Aid Policy in relation to stranded costs.

Many electricity companies had given commitments or guarantees of operation to their Governments not agreeable under conditions of competitive markets. Examples of these commitments and guarantees, referred to as stranded costs, are purchases of electricity at a higher than average cost on a long-term basis or the construction of a coal-fired power plant in order to secure employment in less developed areas.

The Council recognised this problem and provided for a transitional regime which would allow the electricity companies concerned to obtain relief for their commitments or guarantees. The Electricity Directive foresees that derogation from, for example the obligation to grant TPA, could be given by the Commission. Whereas some Member States notified requests for a temporary derogation from specific obligations of the Directive, most Member States did not wish to delay market opening in order to compensate for stranded costs, but opted for the grant of financial compensation schemes.

Aid given by a Member State or through State resources is subject to the Treaty rules on State Aids. Financial compensation for stranded costs can endanger emerging competition on recently opened up markets and seriously distort trade in the developing internal electricity market. The Commission and the Member States agreed therefore that a methodology for the examination of State Aid granted to electricity companies should be prepared and that all Aid schemes notified should be scrutinised in accordance with this methodology. It will thus be ensured that all financial measures of compensation will be assessed in a coherent and equitable fashion.

The methodology will clarify that aid aimed at compensating stranded costs can be authorised, provided that the considered costs result from

well identified and quantified historical commitments that can no longer be honoured in the context of liberalisation. Aid should be degressive and limited to the strict minimum necessary. When these conditions are fulfilled, aid can be authorised since it facilitates the transition to a competitive electricity market.

The methodology document will also stress that the Commission will not accept State Aid that would only serve the purpose of artificially maintaining the incomes of electricity producers at their high historical level, such an aid would indeed prevent the introduction of any significant competition.

VI) COOPERATION OF THE COMMISSION WITH NATIONAL COMPETITION AND REGULATORY AUTHORITIES

The liberalisation of the European electricity industry raises a number of competition problems to the resolution of which EC Competition Policy and Law can contribute. Some of these competition problems are temporary until the transformation of the industry has been accomplished. Other problems are likely to become more permanent issues, although they may take different forms over time. This applies in particular to the various issues around the network.

However, the Commission is not the only Authority dealing with these competition problems. Most Member States have created regulatory authorities that will monitor the market conduct of the electricity operators and in particular the access of thirds parties to the grid as required by the Electricity Directive. In addition, there is the existing network of National Competition Authorities. The Commission closely co-operates also with the regulatory authorities, although the procedural framework for the application of Articles 81 and 82 of the Treaty provides no rules for this co-operation as it does for the liaison with the National Competition Authorities.

New sector specific rules have been introduced in the liberalisation process, which are aimed at protecting competition. Accordingly, there are a number of areas in which restrictive practices are subject to both sector specific rules and competition rules. To the extent that there is an overlap between both types of rules, the Commission as well as the national regulators are competent to deal with the case. In this respect, however, sector specific rules do not exclude the application of

competition rules. This is also explicitly stated in Article 22 of the Electricity Directive.

It is already a long-standing policy of the Commission to encourage the decentralised application of EC Competition rules. Duplication of proceedings should certainly be avoided whenever possible. The Commission has announced that it will normally not intervene in areas where sector specific regulation provides much more detailed rules or goes beyond the requirements of EC Competition Law. However, it will deal with cases having a particular political, economic and legal significance for the Community. Such cases are typically those affecting competition in several Member States. In these cases the Commission has the task to ensure a level playing field for all European electricity suppliers and consumers and provide thus for a minimum level of harmonisation of rules covering market conduct. Whenever national regulatory authorities intervene, they are under the duty to observe the EC rules of competition. They are obliged not to approve any practice of agreement contrary to the Treaty.

VII) CONCLUSION

Liberalisation creates a number of competition problems as has been mentioned above. However, care is taken that these problems are detected and dealt with in order to ensure the success of market opening to the benefit of the European industry and the European consumer.

The objective of EC Competition policy and law in the transformation phase of the liberalising industries is to intervene against restrictions of competition which either impede the creation of a level playing field for all European players or have the effect to preserve historic monopoly supply areas.

The Commission focuses its enforcement activities mainly on restrictive practices with a structural impact. As far as the electricity industry is concerned, network issues as well as cross-border problems are among those given priority.

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