

## Comments to the Draft Market Definition Notice

Iberdrola welcomes the European Commission's commitment to evaluating and refining its competition law "toolkit" including its publication of the **revised draft of the Market Definition Notice** (the "Draft Market Definition Notice") on 8th November 2022.

Iberdrola is submitting this note to highlight certain areas of the Draft Market Definition Notice as regards to the new structure of the energy sector, that is under a profound transformation on the path to decarbonisation, and that will lead to the traditional separation between the different energy sources being outdated.

This should entail precautions in terms of competition and market definition, to guarantee an adequate level playing field in the energy sector, and particularly for the electricity sector, by **focusing more on competition from a forward-looking perspective**. Hence, the attribute of "immediate" in paragraph #25 of the Draft Market Definition Notice, referred to "demand substitution" as the most "effective disciplinary force on the suppliers of a given product", could be unreasonably restrictive if linked solely to time considerations. Possible restrictive focus on a kind of **"instantaneous substitutivity" risks missing many relevant ongoing processes across** the energy and the digital transitions, which are driving a redefinition of certain industries with relevant impact in markets.

As the Draft Market Definition Notice itself acknowledges in paragraph #55, the Commission should not shy away from **considering expected changes in substitution possibilities in rapidly evolving industries** and those especially taking place in the ongoing energy and digital transitions. In this sense, market definition in energy sector should be addressed on a holistic way, beyond the "silo" mentality in favour of integrated energy systems, as addressed already by the Commission. To support this, and recalling the arguments we submitted in the previous roadmap consultation we highlight:

- **Electrification creates new demand for electricity:** the traditional market definition is based on the lack of substitutability between energy carriers for certain uses. However, technological change in recent years, boosted by the EU's ambitious decarbonisation targets, is strengthening demand for electricity also in fossil-fuel dominated segments such as transport and heating.
- **Easier for users to switch between energy carriers:** today, customers are less likely to be captive to a certain energy carrier. For example, hybrid motor vehicles are equipped with two engines and the user may quickly switch between using a combustion engine or an electrical motor. Similarly, users of co-generation or CHP plants can switch in the short term between (i) producing their own heat and electricity, and (ii) purchasing electricity from an external supplier. In addition, strong, direct competition between

energy carrier-specific installations (e.g., between combustion engine cars and electric cars, or between gas boilers and heat pumps) leads to indirect competition between different energy carriers (e.g., electricity, gas, and oil).

- **Energy companies offer a wide range of energy carriers:** the leading energy companies tend to offer a much wider range of energy carriers than in the 1990s. In particular, the trend towards electrification makes convergence revolve around the electricity segment. In Spain, the leading suppliers of energy for household purposes all offer both electricity and natural gas, and many provide “dual offers” that bundle electricity and natural gas. Moreover, the Spanish oil companies have both added electricity to their customer offering and competing in the overall energy market.

Accordingly, in the energy sector, **overall substitutivity can take place among different energy vectors** (electricity, oil, gas, hydrogen, biomass). Due to technology disruptions, regulatory changes or environmental issues, market boundaries are particularly unstable and are continuously re-shaped. Giving the differences among the technologies in place for distinct energy drivers, competition **could be based in other considerations like the cost of service** (e.g., cost per km in road transport, or cost of heating) in the relevant time segment rather than on the simple peer-to-peer price comparison (e.g., cost of kWh or any other unit of energy), therefore **beyond “pure and static” price considerations**. Consumers can actually fulfil their energy need through alternative energy vectors like electricity, oil, gas, biomass, hydrogen, or others in most cases, without or with very limited switching costs.

The Draft Market Definition Notice should address in 3.3. (Evidence to define geographic markets) the **case of the construction and the successful operation of the gas and electricity internal markets**. In fact, EU market players are developing not only in the competitive arena of the whole energy drivers, but also in a larger geographic scope, covering the whole EU market. As such, market coupling in electricity with increasing interconnection capacities in gas and electricity lead to a full UE market wide dimension for energy.

**A new holistic reference market - the EU energy market** – In consequence it is essential to correctly define the concepts of demand side substitution, price/non-price competition and geographic scope, to address the realities of the ongoing energy transition, and ensure competition on a true level-playing field for all market players, as well as the fair application of the rules on mergers and acquisitions.