

Enel's response to the public consultation on the draft revised Market Definition Notice

The Enel Group (Enel) welcomes the European Commission (EC) draft revised Market Definition Notice which appears to properly take into consideration the emergence of new markets, the accelerated market evolution reality in several sectors and the related provision of new or additional guidance on various key market definition issues in order to support stakeholders in their self-assessment.

In the presence of these innovative, dynamic and fast-moving markets, the need for **clear, predictable and detailed criteria in defining the different relevant markets and related segments** gains an increasing importance for the decision-making process of market participants in their business choices. While leaving the market definition open could be acceptable where competition concerns are totally absent regardless of the applied market definition, indicating and delimitating specific market and sub-markets where competition concerns arise could be very useful for avoiding an ambiguous market segment definition (subject to a potential infringement) which may be challenged in court and for preserving a coherent approach, as well as consistence with similar cases to come. In this regard, Enel's suggestion is for the EC to address these criteria and their application to specific situations **in future merger decisions**.

On the other hand, as far as **traditional businesses analysis** is concerned, we reiterate our proposal for the EC to **cooperate more closely with the competent national authorities** and to incorporate their long-lasting and wide experience in defining relevant markets, so as to gradually reach a harmonized view on the same market definition in association with the same variables regarding specific products and territories.

In relation to **bundle of goods and services** Enel welcomes the recognition of their relevance and consequent inclusion in the draft revision at paragraphs (102) and (103) with the possibility to consider the bundle as a relevant product market distinct from the individual products. In fact, bundle offers are increasingly widespread in many sectors (such as energy, Tlc, digital) and should be encouraged from an antitrust viewpoint because can generate significant efficiencies with positive implications on final customers. **However, in order to ensure greater legal certainty, could be very useful to point out in the Notice itself the criteria to determine under which circumstances bundle of goods and services may constitute a new relevant market on its own** (for example specifying the factors to take into account to assess the existence of an adequate level of bundle to bundle competition at the moment of the first customer's choice among alternative bundle offers and, if appropriate, dynamically, during the full life cycle of the bundle) and which parameters should be taken into account for analysing market power and conglomerate effects resulting from such bundled products.

Enel warmly welcomes the inclusion in the draft revised Notice of paragraph (22) which recognises the importance of **temporal considerations** to define relevant product and geographic market.

With respect to the market definition in specific circumstances, we would like to stress out that defining the relevant geographic market based solely on different price conditions offered to customers present there should be addressed with most care, in the context in which (i) a legitimate competitive behaviour does not entirely rests on its

cost-related parameter, and (ii) discrimination (which mainly means applying dissimilar conditions to equivalent transactions or vice-versa) may be relevant only for dominant positions, while market definition should be a step assessed and performed prior to assessing dominance (and not by pre-pronouncing about the dominance existence while identifying potential relevant markets).

Finally, concerning digital markets, Enel appreciates the introduction of specific sections addressing guidance on market definition in the presence of multi-sided platforms (4.4) and of bundles and digital ecosystems (4.5) where the EC recognises the importance of taking into account the indirect network effects, constraints and non-price elements in the competitive assessment including also a wide range of merger and antitrust cases.