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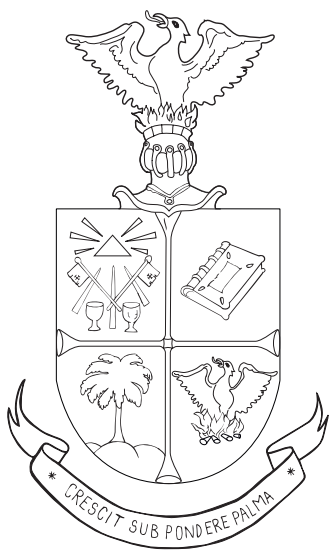

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Competition Law as Market Regulation in the Example of EU Energy Markets

1. Introduction

The idea of regulation by competition law may seem strange at first glance. Market regulation is sectoral and *ex-ante*, while antitrust is *ex-post* and sector-neutral. However, we need to be prepared to be familiarised with this approach. The Commission's proposal for a New Competition Tool (NCT) moves EU competition law further into this direction of regulatory intervention which would allow the Commission to impose behavioural and where appropriate, structural remedies in order to tackle competition problem much more effectively.[2] The essence of regulation is to establish rules of conduct for the future. The operation of the antitrust has typically been based on sanctioning market behaviours occurred in the past, as in the case of the criminal law. The likelihood of sanction is the threat by which the regulator could reach the social respect of the legal rules. In this concept, deterrence is of great importance. However, this type of regulatory approach is not always able to effectively protect society. This has also been pointed out by competition law practice. In the case of market power, the application of Article 102 TFEU can only take place in slow and cumbersome procedures. E.g. in the Microsoft case[3], after a 6 years long investigation by when the Commission obliged Microsoft to provide access to its competitors the company enjoyed 60% market share on the downstream market. Two years later when the Commission had to compel Microsoft to fulfil its obligations by imposing penalty payment, the company already held 74% market share.[4] Another recent example: the remedies imposed on Google in respect of its self-preferencing practices, after a seven-year investigation, turned out that Google's antitrust proposal not helping shopping rivals.[5] Of course, in sectors such as the digital economy where there is no sectoral

1 Associate Professor, Department of Infocommunication Law

2 European Commission, 'Antitrust: Commission consults stakeholders on a possible new competition tool' (2 June 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_977> accessed 20 July 2020

3 *Microsoft* (Case COMP/C-3/37.792) Commission Decision C(2005) 4420 OJ L 166/20 [2008] para 499

4 *Microsoft* (Case COMP/C-3/37.792) Commission Decision C(2005) 4420 OJ L 166/20 [2008] footnote 355

5 Yun Chee, Waldersee (2019)

regulation, the antitrust rules could serve temporarily the only regulatory intervention tool in the hand of the regulator. However, the competition in the digital economy is much more dynamic and fragile therefore the European Commission and other national competition authorities are encouraging the application of the much faster interim measures.[6] Nevertheless, the markets characterised by market power need to be subject to *ex-ante* regulation in the long run, as the proposed Digital Services Act demonstrates it in the context of this digital economy.[7]

The NCT continues and reinforces the competition law regulatory approach which was already implemented in the form of a commitment decisions under Article 9 of Regulation 1/2003 and which has shown its strength in the energy sector. Article 9 of the Regulation 1/2003 allows the Commission to conclude antitrust proceedings by making commitments offered by a company legally binding. Such a decision does not conclude that there is an infringement of the EU antitrust rules but legally binds the companies concerned to respect the commitments offered. When competition law works as a regulation, it does not intend to influence the behaviour of market players with the deterrent effect of sanctioning past infringements, but set exact rules for the future. This approach has been used strategically by the Commission in energy market competition proceedings under Article 9 of Regulation 1/2003. Almost one third of the total EC commitments decisions under Article 9 of Regulation 1/2003 have dealt with market conduct in the energy sector since 2004.[8]

The common energy policy is considered as one of the top European priority projects.[9] The aim is a continent-wide energy system where energy flows freely across borders, based on competition and the best possible use of resources, and with effective regulation of energy markets at EU level.[10] Since the liberalization of the EU energy

6 European Commission, 'Antitrust: Commission imposes interim measures on Broadcom in TV and modem chipset markets' (16 October 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6109> accessed 01 October 2020; Autorité de la concurrence, 'The Autorité de la concurrence has ordered interim measures against Google' (31 January 2019) <https://www.autoritedelaconcurrence.fr/en/communiques-de-presse/31-january-2019-online-advertising-directory-enquiry-services-0> accessed 20 July 2020

7 European Commission, 'Commission launches consultation to seek views on Digital Services Act package' (2 June 2020) <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_962> accessed 20 July 2020

8 De Klein, L., 'PaRR Analytics: One-third of EC commitments decisions in energy sector' (*PaRR*, 13 March 2018) - De Klein (2018)

9 Xueref-Poviac, E. 'Access to facilities in the energy sector: An overview of EU and national case law' (*Concurrences*, 3 Mai 2018) – Xueref-Poviac (2018); and European Commission, 'Commission priorities for 2015-19 – Energy Union' <https://ec.europa.eu/commission/priorities/energy-union-and-climate_en> accessed 28 August 2018

10 European Commission, 'The Communication of the Energy Union Package by the Commission' (25 February 2015) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52015DC0080> accessed 20 July 2020

markets, the competition law enforcement has been active in the sector to promote more competitive gas and electricity markets in Europe and to facilitate market integration as well as the exchange of energy between Member States.[11]

This paper shows that the regulatory style application of competition law which has proved to be an effective complement to European energy regulation in three areas. One is the development of the internal energy market, which has been supported by EU competition law through the elimination of destinations restriction and the limits of interconnector capacities (Chapter 2). The second is to promote infrastructure-based competition through network divestitures and capacity releases (Chapter 3). The third area is to free customers from long-term contracts and make them available to competitors (Chapter 4.).

2. Unifying eu single energy markets

2.1. Eliminating destination restrictions

The EU-approach in regard of destination restrictions was traditionally – in consideration of the high extent of dependency in the gas import[12] – long-term take-or-pay contracts (in both the upstream[13] and the downstream[14] relation) provide the security of gas supply, as they provide security for both the producer and for the purchaser through stable supply.[15] However, a significant change of this approach can be seen due to the liberalization of the European gas supply markets and the fact that purchasers are now capable of having access to other sources of supply, for instance LNG.[16] Nevertheless the EU competition law prohibits resale and use restrictions, as they are against the integration of the European energy market.

In the following cases, the Commission aimed at removing the destination restrictions contained in the energy agreements (concerning both electricity and gas) through the widespread application of competition law. In doing so, it applied both Articles 101 and 102 TFEU, depending on whether the agreements were implemented, with or without negotiations, as a result of unilateral conducts by a dominant company.[17]

11 European Commission, 'Report of the European Commission on Competition Policy 2016' (31 May 2017) <http://ec.europa.eu/competition/publications/annual_report/2016/part1_en.pdf> accessed 20 July 2020

12 The three main sources for natural gas import are Russia (42 per cent), Norway (24 per cent) and Algeria with 18 per cent.

13 contract between the upstream producer and for instance the EU buyer

14 contract between the wholesaler and the end- purchaser

15 Talus, K. 'Long-term natural gas contracts and antitrust law in the European Union and the United States' (2011) The Journal of World Energy Law & Business, Volume 4, Issue 3 – Kim Talus (2011)

16 Ibid 263-264.

17 *EDF S.A. (Long-term contracts France)* (Case COMP/39.386) [2010]; *Bulgarian Energy Holding*

The application of Article 101 TFEU concerned both vertical and horizontal energy agreements.

Ruhrgas and Gaz de France agreed in 1975 on the joint construction of a gas pipeline to transport gas from the Soviet Union to Germany and France. In the arrangement known as the MEGAL agreement, the parties stated that they would refrain from selling natural gas transported by the MEGAL pipeline in each other's national markets (horizontal market sharing agreement). E.On Ruhrgas, the legal successor of Ruhrgas and GDF Suez legal successor of Gaz de France agreed in 2004 that the aforementioned agreement had never been enforced and therefore they would consider it to be void. In 2007 the Commission, initiated proceedings[18] and held that the actual market conduct of the two groups of undertakings did not substantiate the provisions of the formal agreement of 2004 as they continued to employ their agreement concluded in 1975 even after the liberalization of the European gas energy market in 2000 (entry into force of the first gas directive[19]), and kept it in effect until 2005. In its decision adopted in 2009, the Commission imposed on E.ON Ruhrgas and E.ON, jointly and severally, a fine of EUR 553 million, and on GDF Suez also a fine of EUR 553 million, which was the highest amount of fine imposed by the Commission in the energy sector. However, in its judgement of 29 June 2012 the General Court[20] reduced the fine on the E.ON group to EUR 320 million because it found that the Commission did not adduce any evidence to support the conclusion that the infringement in question continued on the French market following the 2004 agreement.

In 1997 Gaz de France entered into a vertical agreement with Italian gas suppliers ENI and ENEL; in this agreement, the two Italian companies undertook to sell the gas supplied to them only in Italy to refrain from selling it in France. In this case[21] the Commission found in 2004 that in light of the liberalization of the energy market in 2003-2004 (after the entry into force of the second gas Directive[22] in August 2004), the parties no longer abided by their existing agreement, and therefore no fine were imposed in the proceeding. In both cases MEGAL and *ENEL / ENI / Gaz de France*, the Commission considered the actual market behaviour of the parties when assessed the length of the market-sharing agreement. In MEGAL case, the parties expressly agreed that, following the liberalization started in 2004, the market-sharing agreements

(Case AT.39767) [2015]

18 *E.ON AG, E.ON Ruhrgas AG, GDF Suez SA* (Case COMP/39401) [2009]

19 Directive 98/30/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas [1998] *OJ L 204, 1–12.*

20 Case T-360/09, *E.ON Ruhrgas and E.ON vs Commission* [2012] ECLI:EU:T:2012:332

21 *ENEL,ENI, Gaz de France* (Case COMP/38662) [2004]

22 Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC [2003] *OJ L 176, 57–78*

were invalid but did not enter each other's markets. In case *ENEL / ENI / Gaz de France* case, there was no such agreement, but the parties actually started competing each other. It appears that in MEGAL case the Court was not persuaded by the lack of evidence of a competitive market conducts as regards the existence of a restriction of competition especially regarded the fact that the parties expressly stated that their agreement was invalid. By contrast, in the ENI/ENEL/Gas de France case, in the absence of an agreement, the Commission accepted that the infringement had come to an end on the sole ground that the parties started competing with each other.

In 2000 the Commission started investigating several gas supply contracts containing territorial restrictions between non-EU producers and European enterprises.[23] In October 2003 the Commission announced in a press release the settlement of the investigation in regard to Gazprom and ENI.[24] As a result of the settlement, the parties concerned removed all territorial restrictions from the concluded agreements, thus declared that ENI is entitled to the resale and transport of the purchased gas without any restrictions and they also undertook to avoid such restrictive provisions in the future and deleted the clauses which required the consent from ENI for the sale of gas to other customers in Italy by Gazprom.[25]

In 2012 the Commission opened a proceeding[26] against *Bulgarian Energy Holding* as in the view of the Commission, the undertaking had abused its dominant position on the free market of wholesale electricity by unilaterally requiring its customers to refrain from exporting electricity with regard to sales outside Bulgaria, limiting their freedom to choose where to resell, thereby the *Bulgarian Energy Holding* had hindered competition through territorial restrictions. The Commission's proceeding ended in October 2015 with a commitment made by the Bulgarian company to the effect that *Bulgarian Energy Holding* would sell a minimum amount constituting a specific, significant part of the electricity produced by itself and its subsidiaries through the independent, newly established power exchange for a period of 5 years from the establishment of the exchange.

The Commission started investigating Gazprom in 2011. In the view of the Commission, Gazprom restricted competition on the market of natural gas supply in three ways. First, it restricted its customers in a number of Central and Eastern European countries in the export of gas to other countries (territorial restriction).

23 European Commission 'Commission and Algeria reach agreement on territorial restrictions and alternative clauses in gas supply contracts' (11 July 2007) < https://ec.europa.eu/commission/presscorner/detail/en/IP_07_1074> accessed 01 October 2020

24 The press release of the European Commission is available at: European Commission 'Commission reaches breakthrough with Gazprom and ENI on territorial restriction clauses' (06 October 2003) <http://europa.eu/rapid/press-release_IP-03-1345_en.htm?locale=hu> accessed 01 October 2020

25 Kim Talus (2011)

26 *Bulgarian Energy Holding* (Case AT.39767) [2015]

Second, it may have applied unfair pricing policies in five Member States[27]. In those Member States, the price of natural gas (because of it being pegged to the oil price as opposed to spot market prices), may have exceeded the fair market value (excessive pricing). Third, Gazprom imposed unfair contractual conditions in Bulgaria and Poland such as making wholesale gas supplies conditional upon the participation of the Bulgarian incumbent gas wholesaler in the South Stream pipeline project; furthermore, the Polish and Bulgarian parties were required to accept Gazprom's increased control over certain transit pipelines. In response to the competitive concerns raised by the Commission, Gazprom undertook to definitively remove all contractual obstacles to the cross-border re-sale of gas and to facilitate free gas distribution in Central and Eastern European gas markets as well. Furthermore, Gazprom undertook to adjust gas prices in Central and Eastern Europe to competitive benchmark prices, such as Western European distribution prices, and to give its customers an effective tool to make sure their gas price reflects the price level in competitive Western European gas markets, especially at liquid gas hubs. Finally, Gazprom cannot act on any advantages concerning gas infrastructure, which it may have obtained from customers by having leveraged its market position in gas supply. In May 2018 the Commission accepted the final commitments offered by Gazprom and made these obligations legally binding in its decision[28] on it.

2.2. Enhancing the interconnector capacities

The Swedish transmission system operator curtailed export capacity on the Swedish interconnectors[29], thereby reserving the electricity generated in Sweden for the national market while the liberalisation of the European energy market set the objective of integrating systems. On the basis of this fact, the Commission stated that the transmission system operator discriminated customers upon their residency.[30] In the Commission's proceeding[31] the undertaking claimed that such transmission capacity limitation was necessary to maintain the stability of the system; however, the Commission held that this could have been achieved by means other than export restriction. In 2009 the company undertook to subdivide the Swedish transmission system into two zones with a view to insuring the stability of the system, and to build a new cross-border interconnector.

27 Bulgaria, Estonia, Latvia, Lithuania, Poland

28 PJSC *Gazprom (Upstream gas supplies in Central and Eastern Europe)* **(**Case AT.39816) Commission Decision C(2018) 3106 **[2018]**

29 Transmission lines between the power systems of neighbouring countries, which connect the areas controlled by the transmission operators of the respective countries

30 Grasso, R., Ratliff, J., 'Unilateral conduct in the energy sector: An overview of EU and national case law' (*Concurrences*, 12 July 2018) – Grasso, Ratliff (2018)

31 *Svenska Kraftnät (Swedish Interconnectors)* (Case COMP/39351) [2010]

The Commission started a formal investigation in 2017 to assess whether Transgaz, the Romanian gas transmission system operator, infringed EU competition rules by restricting exports of natural gas from Romania which is the second largest gas exporter in the EU. Following the opening of the formal investigation, Transgaz offered commitments to address the Commission's concerns. Transgaz has committed to make available capacities at interconnection points for increased natural gas exports from Romania to Hungary and Bulgaria.

The high-voltage electricity grid operator in Germany (TenneT) hindered Danish producers from selling electricity in Germany, by way of limiting capacity in the electricity interconnector connecting Western Denmark and Germany. In 2018 the Commission started an investigation[32], shortly afterwards TenneT proposed its commitments. In the commitments the firm undertook to make the maximum capacity of the interconnector accessible to the market.[33]

3. Promoting the liberalisation process by fostering infrastructure based competition

The liberalization regulation of the European infrastructure markets (like in telecommunication and energy sector) does not require ownership divestitures of the incumbents' networks. Therefore the incumbents could remain vertically integrated which created significant competitive advantages and high barriers of entry for potential newcomers. In order to facilitate the development of the European infrastructure markets the EU opened up the incumbents' infrastructure for the competition and required the incumbents to provide access to their competitors. Therefore the liberalisation regulation of the European infrastructure markets (like telecommunication and energy) is on the basis of the so-called network based competition. The network based competition model balances between incumbents' vertical integration detrimental to market liberalization and market entrance necessary to create welfare enhancing competitive environment. However, the competition law remained applicable in the liberalised markets besides the sectoral regulations and it appears that in the energy sector the EU strived to make up for the deficiency of the liberalisation regulations by using competition law instruments, for instance through ordering infrastructural divestures and capacity enhancement, such as in the cases listed below.

3.1. Infrastructural divestitures

There are different degrees of unbundling, of which one type is the so-called ownership unbundling, where the company concerned divests its assets to third parties.[34] There

32 *TenneT TWO GmbH (DE/DK Interconnector)* (Case AT.40461) Commission Decision C(2018) 8132 [2018]

33 Grasso, Ratliff (2018)

34 Kim Talus (2011) 265-266

was a legislative dispute on unbundling during the course of legislation of the Third Energy Liberalization Package, whether these remedies are disproportionate or not. Unbundling through proportional divestment can be an appropriate measure to settle competition concerns.[35]

a) Czech Republic

The incumbent dominant firm on the market for generation and wholesale supply of electricity in the Czech Republic, prevented entry to the wholesale and generation markets[36] by pre-emptively reserving capacities it did not need. In 2013 the Commission accepted the commitment offered by CEZ to divest part of its generation assets (power plants) (800-1000MW) to a suitable purchaser (competitor).

b) Germany

In 2009 RWE[37], a dominant firm in the gas transmission market by virtue of its network in Germany undertook to divest its German gas transmission system business as a structural remedy[38]. Previously it had limited its competitors' access to its high-pressure pipelines by intentionally understating the capacity of its network, its tariffs for network access caused a margin squeeze, and it failed to implement an effective congestion management system. In reference to the margin squeeze, the Commission found that RWE may have prevented competitors from competing efficiently by setting its transmission tariffs at a high level and thus creating asymmetry.[39]

In the 2000s E.ON[40] abused its dominant position on the market for the demand of secondary balancing reserves when it withheld generation capacity from the German electricity wholesale market, thereby increasing prices and deterring investment in generation by third parties, furthermore, it purchased balancing energy from itself. In the course of the proceeding started for the above reasons, in 2008 E.ON undertook to divest one fifth of its generation capacity, and unbundle the entire high-voltage transmission system business from the distribution network controlled by the company.

d) Italy

35 Grasso, Ratliff (2018)
36 *CEZ, a.s.* (Case AT.39727) Commission Decision C(2013) 1997 [2013]
37 *RWE AG (RWE Gas Foreclosure)* (Case COMP/39402) Commission Decision 2009/C 133/08 [2009] OJ L 133/10
38 Grasso, Ratliff (2018)
39 Ibid
40 *E.ON AG (German Electricity Wholesale Market)* (Case COMP/39388) Commission Decision 2009/C 36/08 [2008] OJ L 36/8

In 2010, the Commission suspected that ENI abused of its dominant position. According to the Commission[41], ENI limited import capacities in the following ways: by holding capacity back unduly (capacity hoarding), when refusing to grant competitors access to capacity available on the transport network, limiting investment in its international transmission pipelines (strategic underinvestment) and so-called capacity degradation, which means that the firm may have delayed the distribution of new capacity[42]. In this latter case it granted access to its pipelines in a less attractive manner, for instance with limited availability. On the grounds of the abovementioned practices, the Commission found that ENI foreclosed competitors and thus restricted competition on the market. In 2010 ENI committed to divest its international gas transmission pipelines bringing gas from Russia and Northern Europe to a suitable buyer.

3.2. Capacity enhancement

The German firm E.ON tied a significant part of the transmission capacities available in the German gas market through long-term bookings, with the intent of foreclosing its competitors from access to its grid. As a result of the Commission's proceeding[43] however, in 2010 E.ON undertook to release a certain amount of long-term transport capacities (17.8 GWh/h) available in its network. In the second step, E.ON undertook to reduce, by October 2015, its overall share of long-term capacity bookings below a threshold to be specified and to remain below the threshold for a further 10 years from the date when it first reached it. However, in 2016 E.ON asked for the termination of its commitment because of the sale of its high-pressure pipelines. The Commission can review under Article 9 (2) of Regulation 1/2003 cases if there is a change in the facts compared to the ones on which the decision was based. The Commission authorised[44] the termination of the commitments in view of the change of market circumstances considering that the German gas markets had been opened to new participants, therefore, E.ON was released from the commitments almost 5 years before the original schedule.[45] In the practice of the Commission there was only one other decision[46] under Article 102 TFEU where the commitments were terminated

41 *ENI Spa* (Case COMP/39315) [2010]

42 Grasso, Ratliff (2018)

43 *E.ON SE/MOL* (Case COMP/39317) Commission Decision C(2005) 5593 [2016]

44 *E.ON SE/MOL* (Case COMP/39317) Commission Decision C(2005) 5593 [2016]; The summary of the Commission Decision was published in the Official Journal: *E.ON SE/MOL* (Case COMP/39317) Commission Decision C(2005) 5593 [2016] C 89/24

45 Scholz, U., Vohwinkel, T. 'The Application of EU Competition Law in the Energy Sector' (2017) Journal of European Competition Law & Practice, Volume 8, Issue 3 – Scholz, Vohwinkel, (2017)

46 Grasso, Ratliff (2018)

earlier than originally proposed, in the *Deutsche Bahn* case[47].

The leading French energy company foreclosed access to gas import capacities in France by strategic underinvestment in its LNG terminals and by the long-term reservation of its gas import capacity for its own purposes. Therefore, the Commission opened proceedings[48], and in 2009 GDF Suez committed itself to limit its reservations to less than 50% of the total French long-term entry capacity by 2014.

4. Elimination of long-term customer restrictions

The long-term downstream gas and electricity contracts can restrict customers in the selection of the supplier. In vertical relations under the Article 101 TFEU, exclusive contracts concluded by non-dominant undertakings no longer than 5 years are in the safe harbour in the EU competition law.[49] The same approach applied under the Article 102 TFEU[50] if the buying party is not an undertaking e.g. in the energy markets when the buyer is a final consumer of the energy.

In 2004 the Commission opened a formal investigation against Distrigaz, the Belgian dominant gas supplier under Article 102 TFEU. In the view of the Commission, long-term contracts limit the freedom of choice of consumers and thus the entry of other gas suppliers on the market due to the combination of two factors: the market share of the service provider (number of tied consumers) and the duration of the contracts.[51] In the case of Distrigaz, 35-45% of customers were tied for a period exceeding one year. In 2007 Distrigaz undertook[52] for industrial users, does not tie a substantial part of the market (equivalent to 30% of its sales) for more than one year ahead. Distrigas agreed to ensure that on average 70% of the gas that it has contracted to supply to customers covered by the commitments will return to the market every year.

The French incumbent operator on the supply of electricity market was investigated by the EU Commission in 2010 under Article 102 TFEU, because presumptively the EDF prevented competitors entering the market through volume, duration and exclusivity clauses stipulated in the contracts concluded with industrial customers.[53] In the accepted commitments, EDF committed on the one hand to limit the duration of

47 *E.ON SE/MOL* (Case COMP/39317) Commission Decision C(2005) 5593 [2016]

48 *GDF Suez SA* (Case COMP/39316) [2009]

49 Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2010] OJ L 102, 1–7

50 see: Communication from the Commission 2009/C 45/02 Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings [2009] OJ C 45/7, 7–20. para 36.

51 *Distrigaz S.A., Distrigas N.V.* (Case COMP/37966) [2007]

52 Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/B-1/37966, [2007] OJ C 77/48, 48–49

53 *EDF S.A. (Long-term contracts France)* (Case COMP/39.386) [2010]

its contracts in a maximum term of 5 years and on the other hand to return minimum of 60% (on average 65%) of the electricity contracted to sell to industrial customers to the market each year.[54]

Gas Natural, a dominant company in the gas market, and Endesa, the market leader in the electricity in Spain entered into an agreement by which Endeasa covered all its gas requirements for electricity generation. At the same time, potential entrants lost an attractive client. The Commission initiated a proceeding[55] in 2000 and Gas Natural and Endesa undertook to reduce the gas volumes covered by the contract and the duration of the supply contract by one third. In spite of this reduction the duration still remained long, 12 years. It seems that the Commission acknowledged the pro-competitiveness of the agreement since it allowed Endesa to secure a stable and predictable price for gas supplies to power stations it intended to build.[56]

5. Conclusion

The EU competition law plays an important supporting role in the liberalization of European energy markets. The competition law regulated energy markets mainly manifested through the commitments decisions made by the EU Commission. Due to them the competition law developed the internal energy market by eliminating of destinations restriction and the limits of interconnector capacities. The competition law also promotes infrastructure-based competition through network divestitures and capacity releases, furthermore free customers from long-term contracts and make them available to competitors. The regulatory style application of competition law has proved to be an effective complement to European energy regulation. The market regulation through competition law has been used strategically by the Commission in energy market competition proceedings under Article 9 of Regulation 1/2003. The NCT continues and reinforces this competition law regulatory approach developed in the energy sector in the digital era.

54 Grasso, Ratliff (2018)

55 *Gas Natural, Endesa* **(**Case COMP/**37542) [2000]**

56 Jones, C. (ed.) 'EU Energy Law, Volume 2: EU Competition Law and Energy Markets', Claeys & Casteels Law Publishing (2016) 254