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Summary of Discussion of the Roundtable on Competition in Energy Markets

Annex to the Summary Record of the 74th meeting of Working Party 2

28 November 2022

This document prepared by the OECD Secretariat is a detailed summary of the Roundtable on Competition in Energy Markets, held by Working Party 2 on 28 November 2022.

More documents related to this discussion can be found at:
<https://www.oecd.org/competition/competition-in-energy-markets.htm>

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Draft Summary of Discussion of the Roundtable on Competition in Energy Markets

1. **The Chair** introduced the discussion by saying that the Competition Committee and Working Party No. 2 had held many roundtables on energy over the years, but the major roundtables on energy were held more than 20 years before. Until 2021, everything seemed to be settled, and since then only the development of renewables had been discussed. With Russia's invasion of Ukraine, energy prices soared, and most governments stepped in believing that the increase would be temporary. He said that if this is an issue of quantity and availability, price control is not enough and rationing would have to be introduced.
2. He announced that delegations submitted 22 contributions and that a short survey on the views of competition authorities about energy markets would be carried out during the discussion. He introduced the guest speakers: **Georg Zachmann**, senior fellow at Bruegel; and **Mary Starks**, Partner at Flint Global who prepared the background paper for the discussion.
3. **Ms Mary Starks** started with an overview of the energy markets. She said that State-owned Enterprises own the bulk of the oil reserves, while private companies account for slightly more than half of the investment. She also mentioned that energy markets are highly influenced by geopolitics. The ability to transport and store are fundamental drivers of how responsive supply is to demand and therefore of what happens to prices. Energy crises can be understood in these terms because of rigidities in transport and storage. Supply, in the short term, is unresponsive or inelastic to changes in demand. In the short run, this means that demand shocks can cause very big price increases. Similarly, because energy is an essential good, demand is relatively unresponsive in the short run, and a supply shock can also cause a big price increase.
4. At the beginning of the pandemic, oil prices went negative in the US. There was so much oil coming onto the market and so little use for it that all the storage was full and the price fell to about minus USD 37 a barrel. The collapse in prices in 2020 came on top of a more structural decline in investment, which reflected earlier price slumps but also climate policies. In 2020 and 2021, investment in oil and gas production fell by about a quarter. When energy demand rebounded in 2021, prices bounced back above pre-pandemic levels. For now, Europe is still receiving some natural gas via Ukraine and Turkey but volumes are around 20% of what they used to be. Natural gas prices have leapt from around EUR 50 a megawatt per hour to a peak of EUR 350 a megawatt per hour in August 2022. This impacts the price of electricity, headline inflation, and consumers' and businesses' energy bills.
5. In response to the crisis, governments have introduced policy measures to ease gas shortages and the impact of high bills on businesses and households. On the supply side, there have been investments to increase import capacity for liquefied natural gas (LNG). New floating LNG terminals are being built, and Europe is diversifying away from its previous main source of supply, namely Russia. On the demand side, there have been measures to reduce dependence on fossil fuels, to invest in renewable infrastructure, and to incentivise customers to reduce consumption. There has also been substitution from natural gas towards oil and coal, and several countries have also adopted redistributive measures.
6. The transition to net zero is a big challenge, especially for emerging economies. Renewable prices have been coming down. Even before the crisis, solar energy was getting

competitive with gas and is now considerably cheaper (in term of total cost). However, because of the issues associated with intermittency, it is not straightforward to fully replace conventional electricity generation with renewables. There is also a market design problem with high penetration of renewables: competition tends to drive the price towards marginal cost, which is close to zero for solar and wind. This is problematic from the point of view of incentivising investment. Interventions are needed to ensure sufficient investments into renewables.

7. Ms Starks stated that many countries worry about the market power of energy producers. Competition authorities have no or very limited powers and tools to act against oil and gas producers in other jurisdictions. Several competition authorities have been asked to investigate the causes of high prices. Even if such investigations do not find evidence for anticompetitive behaviour, they can be useful in understanding and explaining the reasons behind high prices. An important issue is firms' failures and their impact on competition. Lastly, authorities have a role in ensuring that regulatory and policy responses to the crisis do not undermine price signals in the market.

1. Renewables and Net Zero Transition

8. **The Chair** introduced the first section of the roundtable on renewables, intermittent supply, and the 100% carbon free target. He gave the floor to **New Zealand**, and asked how the transition would be managed. New Zealand has a hydro-dominated system and a renewables' share of over 80%. The Chair asked what to do to reach Net Zero, if at some point wholesale spot prices are not be sufficiently high to provide incentives for investment in renewables. The delegate explained that in the last 30 years, the state-built system has been corporatised and partly privatised. Investment in generation is now a competitive activity, but the country has realised that it is not investing enough in order to reach its ambitious targets. The Electricity Authority thinks that a battery project and a large pumped hydro scheme by the government created uncertainties about future prices, which hinder other investments. Even though there is plenty of hydro generation, storage capacity is low. This creates a vulnerability in the power system. The regulator has asked the government to advance the battery project to remove some of this vulnerability. Natural gas is another source of uncertainty. There is a moratorium on new exploration and a plan to phase out natural gas. The Electricity Authority asked the government to be clearer about when gas will no longer be used. There is no clarity on how an energy only spot market can incentivise renewables, but competitive tendering for capacity combined with payments for production might be a feasible option.

9. **The Chair** then turned to **Australia** whose contribution touches on the problem of intermittent supply leading to a situation where demand can only be met by conventional producers with high marginal costs, leading to high prices. When this happened, the energy regulator obliged generators to supply electricity irrespective of the price. The Chair asked how the regulator had such powers and who covered the cost of the generators forced to supply. The **Australian** delegate said that the power to suspend the market was implemented as part of the policy considerations when the national electricity market regulations were introduced. Under that power, the market can be suspended and generators can be directed to supply. During market suspension, the price is capped. The provision in the legislation enables the generators to seek compensation later on. The compensation is agreed by the market operator and then passed on by the retailers to consumers in subsequent periods. There is a financial impact in the interim period on the retailers, and some independent retailers have exited the market as a consequence of the likely financial impact, but also for other reasons such as the lack of liquidity in hedging markets. The

overall situation is quite complex, and the country is still working its way through this unique situation.

10. **The Chair** then turned to **Norway**, where there is an antitrust concern about co-operation between oil and wind power companies to develop new technologies, especially floating wind platforms. **Norway** said that its current production of renewable energy is enough to cover demand. However, the production of renewables has to be increased in order to meet the expected increase in domestic demand for electricity. When it comes to ensuring competition and allowing the creation of joint ventures, there is a difference between collaboration among companies to develop new technology, and one that could reduce the number of competitors. There are currently 11 different joint ventures. In order to ensure competition in offshore wind licences, it is important that the contracts have an appropriate level of risk sharing between the state and the companies involved. If the financial risk is too high, there will be insufficient interest in the tendering.

11. **Norway** said that the capacity of the grid is an important issue too. Investing in sufficient capacity will be a prerequisite for offshore wind power. Their distribution system operator (DSO), Statnett, was given the role of a system operator for offshore wind power to efficiently safeguard operational reliability in the entire power system. Statnett intends to contribute to the development of rational grid solutions for connecting offshore wind power in close collaboration with other parties. In addition, it will be important to ensure that the mainland grid operator has incentives to make the necessary investments to keep up with the increased production and demand in Norway. The current revenue system for the DSO should provide such incentives.

12. **Norway** also said that its wholesale market is part of the Nordic electricity market and the day-head prices are based on auctions on that marketplace. Since the wholesale price is set by the marginal producers in neighbouring countries, the wholesale price in Norway is influenced by European gas prices. Current plans to increase production by renewables are not expected to change the way in which prices are set, as long as there are other generation technologies in neighbouring countries.

13. **The Chair** then asked the **United States** about the strengthening and expansion of the transmission grid. The Federal Energy Regulatory Commission (FERC) had eliminated the exclusivity of investing in the transmission grid but is now thinking of reinstating it. The **United States** said that the elimination of the exclusivity (so called “right of first refusal”) was intended to open up construction and ownership in the hopes of having more innovative, efficient, and lower cost transmission facilities added to the grid. A right of first refusal grants the incumbent electric transmission utility the right to construct the transmission facilities within its service territory and thus may exclude competing transmission developers. When the regulator introduced competition by removing the right of first refusal in 2011, it only removed it for the largest projects. Since then, the vast majority of the transmission development has been at the local level. In the meantime, investment in regional and interregional transmission lines has been limited. Some contend that the introduction of competition is to blame, but there is insufficient evidence of that. On the contrary, there are other causes for the distortion, such as the continued existence of rights of first refusal for exempted facilities which give incumbents incentives to invest in them rather than pursuing the regional facilities that are subject to competition. Another reason is the lack of sufficiently forward-looking regional transmission planning processes. FERC’s proposal is based on the idea that reinstating incumbents’ right of first refusal would jumpstart construction of regional projects. Even if it did, it would come at a high cost to consumers because the incumbents have no incentives to reduce costs. Although regional projects have been limited, those that have occurred show the benefits of competition. Rather than reinstating the right of first refusal, the competition authority

encourages FERC to consider other options to promote regional investments that are consistent with competition. This type of interaction with FERC is an example of the application of President Biden's Executive Order on promoting competition through the co-operation of different agencies and bodies.

2. Policy responses to the crisis

14. **The Chair** introduced **Dr Georg Zachmann** and invited him to discuss the current situation in Europe. The speaker explained that his plan was to cover three points: (i) to discuss the current situation that increases the risk for market power abuse; (ii) to explain why price caps are not an appropriate solution to the crisis; and (iii) propose a solution based on improving market functioning and addressing distributional effects both within countries and between countries.

15. Dr Zachman stated that there are three crises happening: a Russian gas crisis, a French nuclear crisis, and a global undersupply in oil and gas. In this situation, if one of the players in the power sector drops off, the price increases drastically and maybe demand cannot be met. There are also more players that can make money from withholding or shifting around their capacity. Also, in the market there are several relatively illiquid financial products linked to different types of fuels. These might give scope for the exercise of market power. On top of that, there is more congestion, which decreases liquidity in some regional markets. Another element is the politicisation of the energy markets. There are discussions on setting price caps, tinkering with the Emissions Trading System (ETS), and storage filling mandates and policies. Given this political environment, trying to exercise market power becomes more likely.

16. In Europe, the challenge has always been how to price the last unit. The problem is that this last unit wants some of its capital costs to be covered by price. In normal times, this may happen once per year. However, under the circumstances they can bid over marginal cost for several months. The speaker asked how competition authorities should assess above marginal cost bidding of units that are typically used very rarely and have to recover their capital costs through scarcity pricing.

17. European markets have readjusted to this situation. There has been an important reshuffling in electricity flows thanks to market forces. It is crucial to make sure that the European market is maintained. Therefore, policies that interfere with electricity and gas prices are extremely risky in terms of security of supply. In 2022 Russian gas flows decreased, but storage had to be filled. This was achieved by significantly reducing demand and increasing LNG imports. It was only possible through the market.

18. In order to reduce electricity prices, one of the proposals is the Iberian mechanism, by which the wholesale price cap was set in relation to the natural gas used for electricity generation in the Iberian market. The speaker does not think that it is a good idea. If gas prices are kept at EUR 50 per megawatt hour, there will be shifts in the merit order and gas-fired power plants will produce more. If more gas is burned, the gas price increases further and therefore more subsidies are needed.

19. The speaker said that market interventions through price caps are not a good idea, but the problem of high prices is real. The price increase equals about 1.5-2.5% of the GDP of European countries. Household prices for electricity and gas started to increase but have not yet reached their final level. Due to the crisis, there are substantial distributional effects between countries and within countries. Enabling the tax system to capture the extraordinary rents allows transfers to counter the distributional effects. On top of that, there is a role for competition policy to monitor the increased risk of anti-competitive

behaviour. For this, more data, resources, and better collaboration between financial and energy regulators are necessary. It is also fundamental to clearly communicate that market power abuses can be prosecuted well after they occurred.

20. Finally, neither price caps nor just letting the market work are possible solutions because of the distributional effects between countries. Transfers between countries might be necessary to deal with this issue.

21. To conclude, Dr Zachmann said that there are resource pooling policies that allow transfers between countries and at the same time benefit all countries. The most important one is a joint industry support to avoid harmful subsidy races. A common European approach would be a good way to overcome this risk.

22. The Chair introduced the **European Union** that has adopted a regulation setting a price revenue cap for inframarginal electricity generators. He asked whether the cap would be the same across all Member States and if it would differ according to the source of electricity generation. The **European Union** explained that the cap is temporary and applies to the revenues of the inframarginal electricity generators, and not to wholesale prices. In principle, it is the same in all Member States (EUR 180 per megawatt hours) and applies to all inframarginal electricity generation. The regulation allows Member States to adapt the cap. They may apply different caps for different technologies, or increase the cap for certain technologies if it is justified by the underlying investment and/or the operating cost. The cap is applied ex post, so it should not impact price formation in the wholesale electricity market, and it should not distort investment signals, which are very important to achieve the decarbonisation of electricity generation.

23. **The Chair** then turned to **Italy** where the government required that fixed price contracts for the retail of electricity and gas be frozen until April 2023. As a result, some traders had to leave the market. He asked if they will be able to come back once prices go back to normal. In **Italy**, around 40% of domestic consumers are still under a regulated regime. The government intervention concerns the other 60% of domestic consumers who have signed a fixed price contract. For the 40% of the market, the regulator tries to keep the tariff lower than the wholesale prices. In August 2022, the Italian Government intervened and froze the fixed price contracts until April 2023. This led some firms to terminate the contracts in the free market. Firms hit the most by this intervention are those that are not vertically integrated and just sell in the free market. As this is an ongoing situation, it is not possible to say if it is permanent and what is the damage done to competition. In April 2023, the government may extend this measure without providing a subsidy to the firms. They will either be able to renew their contracts applying a market-based price or public funding will eventually be needed.

24. **The Chair** gave the floor to **Portugal** where the competition authority has been advocating for the least possible restrictive measures. He asked how the government reacted to its suggestions. **Portugal** has adopted the Iberian mechanism, by which the wholesale price cap was set in relation to the natural gas used for electricity generation in the Iberian market. In a parliamentary hearing, the authority raised awareness on the costs and risks that the measure could entail, arguing that it should be as limited in time as possible. The circumstances of the Iberian wholesale electricity market were considered, including the limited interconnection capacity of the peninsula with the rest of Europe, the high exposure of consumers to wholesale electricity prices, and the high influence of gas in price setting for electricity, which have led to serious disturbances in the Spanish and Portuguese economies.

25. The measure does not entail that natural gas power plants operate below cost. They will most likely not because the cap is coupled with direct grants to electricity producers to

cover part of their fuel cost. This grant is based on the price difference between the market price of natural gas and the price cap which is set at an average of EUR 48.8 per megawatt hour. Additionally, inframarginal units will see their revenues and margins reduced because of the capped market price. This mechanism consists of a transfer of part of producers' inframarginal rents to consumers. The measure is regarded as state aid and has been assessed and approved by the European Commission. Part of the cost of the cap will ultimately be passed on to consumers, in the form of a charge. The benefits of the mechanism are to delay or defer the impact of high electricity prices on firms and households. Today, wholesale electricity prices in the Iberian market are lower, but this comes with some risks. The measure may distort price signals, which in turn may provide fewer incentives to reduce natural gas consumption. Further, if the compensation is insufficient to fully cover the costs of gas-fired power plants, then natural gas may shift to other higher priced markets; this is a risk to security of supply that cannot be excluded.

26. **The Chair** then moved on to **Spain**, which has also adopted the Iberian mechanism. He noted that, under this mechanism, it is the consumer who pays for the inframarginal electricity bought and asked about how important the inframarginal plants are on total production. **Spain** explained that the mechanism controls the market bids of the fossil-fuel plants. The reference gas price for bids by these plants was capped at EUR 40 per megawatt hour, while the rest of the inframarginal non-emitting technology plants continued bidding as usual. The merit order of technologies does not change. Gas-fired power plants produce only when it is needed. It is expected that in 2023 the gas market will stabilise and this measure will no longer be necessary. The positive aspect of the mechanism is that plants adhering to the price cap are compensated based on the reference price. Since the reference price of the Dutch Title Transfer Facility (TTF) is sometimes EUR 70-80 higher than gas prices in Spain, Mercado Ibérico de Gas (MIBGAS) is used as the reference price. In Spain, there is no gas shortage and the market works well. In Europe, there are different wholesale markets because they are not well connected. However, for some time, the northern wholesale market was the reference because it had very low prices. But prices on those markets say nothing about available supplies in Spain because it is very exposed to LNG markets but not to Russian shortages. The benefits of the mechanism are that it limits the inframarginal windfall profits and that it uses MIBGAS as a reference price. The mechanism has worked, it has reduced electricity spot prices and forward prices and ultimately consumers' electricity bills because the MIBGAS is more predictable. An added benefit is that there are no subsidies, and there is no increase in gas demand for power generation.

27. **The Chair** then moved on to **France** where electricity is mostly produced through nuclear energy. The French competition authority has been asked to rule on the question of the prevalence of nuclear energy and the way in which this is reflected in retail offers to consumers several times. Access to nuclear electricity is one of the main issues in the French market, since all nuclear power plants are operated by a single operator, EDF. This is likely to give it an advantage over its competitors. To remedy this situation, a regulatory mechanism, ARENH, was established. It gives competing suppliers a right to buy nuclear electricity at a regulated price of EUR 42 per megawatt hour within the annual limit of 100-terawatt hour. Its objective is to allow consumers to benefit indirectly from the competitiveness of the French nuclear energy sector. It works by allowing competing suppliers to build competitive retail offers through access to nuclear supply at a regulated price, which is not exposed to wholesale market prices.

28. In order to contain the increase in energy bills, the government increased the amount of electricity sold under ARENH by 20 terawatt hour. When consulted on this measure, the authority pointed out that there were uncertainties about the actual passing on of the benefit to customers. It did not rule out that some suppliers may prefer to sell the

volumes they acquired at a higher price on the wholesale markets. It recommended that the energy regulator's control system be strengthened by obliging each supplier to report on how additional volumes are passed on in the retail offers. It also pointed out that this measure consisted in making greater use of a regulatory mechanism, which is already detrimental to the rules of free competition, and which is likely to further confuse price signals on the market. The authority advocated for the use of more targeted measures for the consumers most exposed to the crisis.

29. The authority also expressed some criticisms on the price regulation mechanism of nuclear energy. In its latest reports, it noted that its objectives had not been fully achieved. Furthermore, it had not encouraged alternative suppliers to invest in new means of production that would compete with nuclear power.

30. **The Chair** invited **BIAC** to take the floor. Noting that there is a belief that this is a temporary situation, his first question to **BIAC** was how we know what temporary is. The second question was how to deal with low-income people who may need relief. **BIAC** said that they do not favour the hasty implementation of policies adopted to protect consumers because they do not contemplate potential long-term consequences. The weakening of market-based mechanisms may indeed sacrifice economic efficiency. **BIAC** referred to the OECD Economic Outlook that explains that such policies should be targeted and temporary so as to not add to inflationary pressures and increasing public debt burdens. In general, market interventions should be carefully designed. This is of special concern when it comes to ensuring continuing progress towards net zero. If price interventions become long term, they threaten to derail the green transition and disincentivise private investment in renewable energy and sustainable consumer behaviour. Finally, **BIAC** encouraged competition authorities to build the required technical expertise about energy markets to identify anti-competitive conducts and remain effective enforcers of competition law, but also to be able to advise other parts of government of the trade-offs and global ripple effects resulting from market interventions.

31. **The Chair** opened the floor for questions and **Germany** took the stand to say that the Bundeskartellamt published an interim report of its sector inquiry on refineries that looks at the development of costs and capacities and other factors and their impact on price. It also looks at the effect of a temporary tax reduction that was implemented in the fuel sector.

3. The effects of the crisis on liberalisation

32. **The Chair** introduced the part of the discussion on the energy crisis and liberalisation. In **Lithuania**, the law on electricity sets a three-stage liberalisation process, but the government postponed it. The Chair asked Lithuania why this happened and what role the authority played in the process. The delegate said that after the second stage of the process was completed, in July 2022, prices were almost close to their peak. Soon after, an independent supplier exited the market. Reacting to this rapidly changing situation in the market, the government decided to postpone the third stage of the liberalisation. Its aim was to avoid a significant increase in electricity prices in stage three.

33. The Competition Council considered that the liberalisation process should be continued as planned. First, the delay might increase uncertainties to existing and potential new market entrants. Second, this meant that they would have fewer customers to compete for than they could have had. Third, this might strengthen the impression to consumers that new entrants might not be that reliable. Postponing the third stage might make electricity supply activities less attractive to new entrants, which means less competition and less

incentives to innovate. The Lithuanian government still decided to postpone the third stage to 2026. It expects that this will allow for additional time to generate more renewable energy.

34. **The Chair** then turned to **Romania** where the process of de-regulation of the natural gas sector started in 2014, but supply to households was only liberalised in July 2020. In a market study, the Romanian Competition Council found that consumers are not interested in the process. Did this make the government change its plans? Why was the study carried out in the first place? The delegate explained that the last stage of the liberalisation process of the gas sector in **Romania** covered the supply to households and it started in July 2020 with a one-year transition period. The market study was carried out in order to follow it and see the results. At the time, the consumers who switched to a competitive contract benefited from lower prices, but fewer consumers than expected switched. In July 2021, the market was fully liberalised. With the energy crisis, prices increased. The government kept prices for household consumers of gas steady and set up a compensation mechanism for gas suppliers. Initially, the measure was supposed to be in place for five months, but it was extended to August 2023.

35. **The Chair** asked Romania if the cost of gas suppliers is covered or if they sell below cost. **Romania** answered that the market price is very high and the price cap is very low, so they have to be compensated for the difference between the purchase price on wholesale market and the selling price to consumers. Since the price cap is so low, there is no point in searching for better offers on the market.

36. Before moving on to the section on antitrust interventions, market studies and advocacy, **the Chair** turned to **Israel**. He asked if Israeli consumers benefitted from the split market agreement in place. The delegation replied that the **Israeli** gas market is isolated so the answer is both yes and no. Gas prices are significantly lower than those in the rest of the world for two reasons: first, Israel's agreements with the gas fields were signed before the price increase and most of them are long-term. Second, the competition between the gas fields and the amount of gas sold to the domestic market. The amount that the gas field can export depends on the government's approval, which is not easily granted. Gas is exported to Egypt and Jordan and there are pipelines to both countries.

37. There is a significant amount of natural gas available in Israel, but there was not enough competition before the split market agreement. Two of the largest fields, Tamar and Leviathan, are partially owned by the same operator, which is also responsible for the flow of gas from the Tamar reservoir. This created a conflict of interest that was resolved by forcing them to have a split market agreement, i.e. the operator of the Tamar reservoir committed to acting according to the independent requirements of each of the holders of the field to sell gas from the reservoir without requiring the consent of the other holders. Some benefits can already be identified. Since then, there have been a number of negotiations with Tamar without involving the operator that has the conflict of interest. Even though the Tamar operator joined the contract in the end, the possibility of selling separately has created competition and led to the current lower prices. In the future, it will hopefully be possible to extend the split market agreement to other reservoirs.

38. **The Chair** asked if purchasers pay the spot price or if they pay a different price stipulated in their contracts. **Israel** mentioned that the gas fields had committed to sell gas at a fixed price without making any reference to a spot price. As a result, it is possible to buy gas at an eight-year-old price.

4. Direct interventions by competition authorities

39. **The Chair** noted that from 2018 to 2023, the Administrative Council for Economic Defence (CADE) of **Brazil** received 271 merger notifications involving the energy sector. **Brazil** said that Petrobras wanted to sell Gaspetro which held equity stakes in 18 gas distribution companies operating in several states. Petrobras divested its 51% stake in Gaspetro to Compass Gás & Energia, and some associations were concerned that the sale would create risks for competition due to possible self-dealing and because Compass would have access to sensitive information. CADE evaluated these arguments and decided not to block the sale. Regarding the possible concern of self-dealing, Compass does not hold a dominant position in the gas supply market. Petrobras is still Brazil's major supplier and the expectation is that this market will be open to the entry of new players. Further, the new gas law does not allow the exchange of sensitive information.

40. **The Chair** said that in the cases discussed by **Ukraine**, the competition authority was very quick in intervening and eliminating anti-competitive clauses in gas supply contracts. One of these contracts was with municipal heat companies, which had to buy gas exclusively from Naftogaz. The Chair asked how the contract was brought to the authority's attention and if Naftogaz was fined for introducing restrictive clauses. To answer the first question, **Ukraine** said that they regularly monitor the energy market and had received several complaints from municipal heat energy enterprises. During the investigation, the discriminatory approach by Naftogaz was established and the authority made binding recommendations to the undertaking to stop using conditions in contracts that limit heat energy enterprises from changing natural gas suppliers. The Antimonopoly Committee of Ukraine (AMCU) uses such legal instruments when it is necessary to quickly influence the situation on the market. As a result, the company developed an additional agreement to its gas supply contracts and sent it to all its counterparts. In the additional agreement, all provisions preventing customers to enter into contracts with other suppliers have been removed. Since the recommendations were fully implemented by Naftogaz, AMCU did not impose any fines.

41. **The Chair** then gave the stand to **Mexico**, where, in 2022, the Comisión Federal de Competencia Económica (COFECE) warned that the modification to a regulation introduced by the Ministry of Energy may put at risk the competitive development of the gas market. COFECE filed a constitutional controversy. The constitutional court granted a suspension of the regulation until it evaluates it on the merit. **Mexico** said that when COFECE identifies a regulatory measure that could seriously affect the structure of a sector or a market, it can file a constitutional controversy before the Supreme Court of Justice. Concerning the natural gas regulation, it issued an opinion arguing that the regulation unduly limited non-discriminatory and open access to the pipelines operated by CENAGAS, and strengthened the position of the state-owned oil and electricity companies. This would cause disruptions in the natural gas supply chain, which could result in a price increase and deteriorate supply conditions. However, this regulation was issued without considering COFECE's recommendations. Therefore, COFECE requested the Supreme Court to rule on the limits of the sectoral regulator's powers with respect to the constitutional principle of competition, as it seriously affects the competitive dynamics to the detriment of COFECE's mandate and consumer welfare. The final ruling of the Supreme Court is outstanding.

42. **The Chair** then moved on to **Colombia** where, in 2022, the energy regulator issued a regulation for a bidding process for expanding offshore wind energy generation plants. He asked the delegation if it had decided to look at this or it was asked to do so. In **Colombia**, given the role of competition advocacy, all regulators have to communicate

their regulations to the Superintendence of Industry and Commerce (SIC). SIC helps the regulators to mitigate the risk of market distortion that may arise in the regulatory process. This may lead to the issuances of the ex-ante opinions on regulatory measures that are submitted for the regulatory authority's consideration. SIC had issued different competition advocacy opinions about the Colombian electricity market, particularly the non-conventional renewable energy segment. SIC's recommendations were accepted. The recommendations made by the Superintendent aimed at: promoting guidelines for the implementation of complementary allocation mechanisms; ensuring that their design is not detrimental to social welfare; introducing competitive dynamics in the wholesale electricity market; including regulatory provisions that generate certainty regarding new generation projects; avoiding generating frictions between economic competition and allocative effectiveness; incorporating price regulation; and avoiding the introduction of caps. These recommendations are not binding, but in most cases the regulator considers them and changes the regulation accordingly. The market is therefore protected.

43. **The Chair** then invited **Peru** to take the floor. In Peru, the Instituto Nacional de Defensa de la Competencia (INDECOPI) initiated a market study on liquid fuel and liquified petroleum gas. No anti-competitive features were identified. The Chair asked to confirm this finding and the reasons why Peru decided to launch the market study in the first place. **Peru** clarified that the market study is ongoing the main objective is to better understand how these markets work. INDECOPI has found a high level of concentration in imports, in storage and dispatch, and in the wholesale commercialisation of liquid fuels and LPG products. High degrees of concentration and vertical integration relationships can be observed, in different segments of the market.

44. **The Chair** then turned to **Austria** who carried out a similar study on gasoline distribution and oil refineries. It found that the market operates normally. The Chair asked what the authority would have done if it had found increases in profit margins. In **Austria**, because of price increases, the authority received several complaints, most of them from car drivers who suspected price fixing and abuse of market power. That is why the sector inquiry into the fuel market started. The main findings were that the bulk of price increases at petrol stations was due to higher international price indices for diesel and petrol. This resulted in significantly higher profit margins for refineries. As for fuel retailers, their gross margins were only substantially elevated in March 2022 but largely returned to their pre-war levels in the following months. The analysis of the price and cost data did not show evidence of price fixing or use of market power neither at the level of fuel retailing, nor of oil refining. One of the most important lessons was the need of an in depth understanding of the market for refined products and the significance of international price assessments for understanding the pricing behaviour in the Austrian market. On the one hand, price changes in this market are effectively passed on to fuel retailers. On the other hand, the price reporting agencies seem to play a prominent role in the price behaviour of petroleum products.

45. **The Chair** moved on to **Türkiye** which addressed an issue related to direct exchanges between suppliers of petroleum products. The Turkish Competition Authority suggested that these exchanges are not anti-competitive and recommended to change the regulation that currently prohibits them. The Chair asked if the government changed the regulation. **Türkiye** explained that what is forbidden is to sell fuel purchased from one distributor to another distributor. The authority's recommendation has not been formally submitted to the Energy Regulatory Authority as the sector report has not yet been published. Therefore, this provision is currently in force, but small suppliers want this law to change because they have difficulties in finding supplies. The impact of the proposal on the market will be seen once the sector report is finished and the energy authority lifts this ban.

46. **The Chair** gave the floor to **Chinese Taipei** that reported on a reform of the electricity sector. **Chinese Taipei** said that in the 2017 amendment of the Electricity Act, the government set up a two-stage process for liberalising the electricity market. The first stage focused on the promotion of green energy and the separation of power generation from the grid. The law states that Taipower will continue to operate in the power market but is prohibited from running any business downstream of the transmission market. The divestiture mentioned in the law refers to requiring Taipower to divest its generation capability by 2025. There are two reasons why the market continued to be a thin market instead of a thick market. The first is that the sale price of these assets is equivalent to the sale of the state assets and the price needs to be reviewed by a committee, because of concerns about national assets being sold at a too low price. The second reason is related to labour policy because the sale of any power plant may require the dismissal of employees, who are public servants. This is why there will probably not be a high incentive to purchase power plants from Taipower and the market will continue to be a thin market. In order to keep competition on the electricity market as lively as possible, resources have been put into investigating potential violations of competition law, and close attention will be paid to the development of the international energy market.

47. Moving to antitrust issues, **the Chair** turned to **Poland** where soaring coal prices led to an inquiry of the domestic coal market by the competition authority. In **Poland**, the competition authority is also responsible for consumer protection and as such supervises local trade inspection. The authority used this power to inspect 250 coal depots.

48. This case also allowed the authority to advocate for competition measures at the local level. The market study confirmed that the increase in coal prices was linked to a shortage of coal. The selling prices of coal were going up proportionally to the increase in the purchase prices by depots from suppliers or importers. There was no significant increase in profit margins. The main problem of entrepreneurs running coal depots was to find supplies because of the lack of coal due to the ban of imports from Russia and Belarus. Because of imports from distant countries, the cost of transport also increased. Inspectors checked whether the warehouses store coal for later sale with greater profit but did not find any. The authority did not find any clear evidence of an anti-competitive agreement. Another issue is that many households still use coal for heating. Because of its quality, the local coal is used by electricity companies, and imported coal is used for heating.

49. **The Chair** shared the results of the polls run during the session among delegates, showing the following: several authorities are engaged in the net zero transition, a majority has been directly involved in the energy crisis, and they believe that competition will decrease with the energy crisis because of government interventions. To conclude, he said that the question of whether the crisis is temporary remains to be seen. He also remarked that it is unclear whether government interventions will create sufficient incentives for alternative sources of energy, or free market prices could provide better incentives. Finally, he said that the competitive solution is going to be politically difficult to propose.