



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

**DAF/COMP/WP2/RD(2010)11
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Working Party No. 2 on Competition and Regulation

**OECD RECOMMENDATION CONCERNING STRUCTURAL SEPARATION IN REGULATED
INDUSTRIES**

-- Presentation by Céline Gauer --

14 June 2010

The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its meeting on 14 June 2010.

Please contact Mr. Sean Ennis if you have any questions regarding this document [phone number: +33 1 45 24 96 55 -- E-mail address: sean.ennis@oecd.org].

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Slide 1



European Commission
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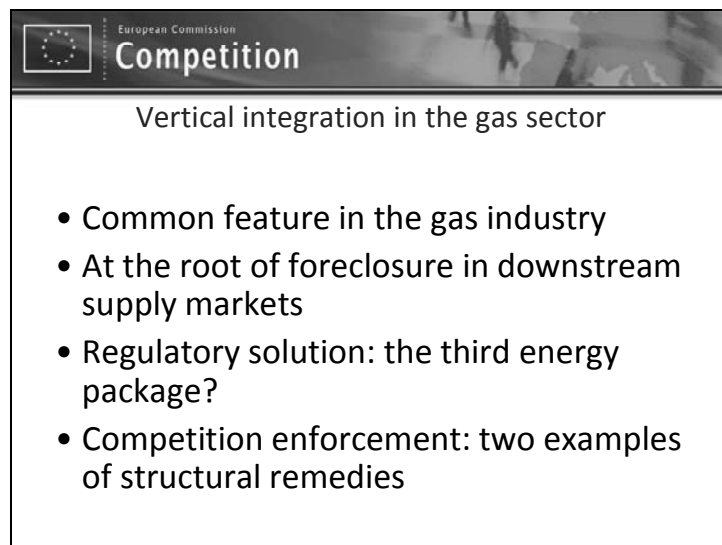
OECD Recommendation concerning structural separation in Regulated Industries

14 June - Paris

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* All views expressed are personal and do not commit the European Commission

Slide 2

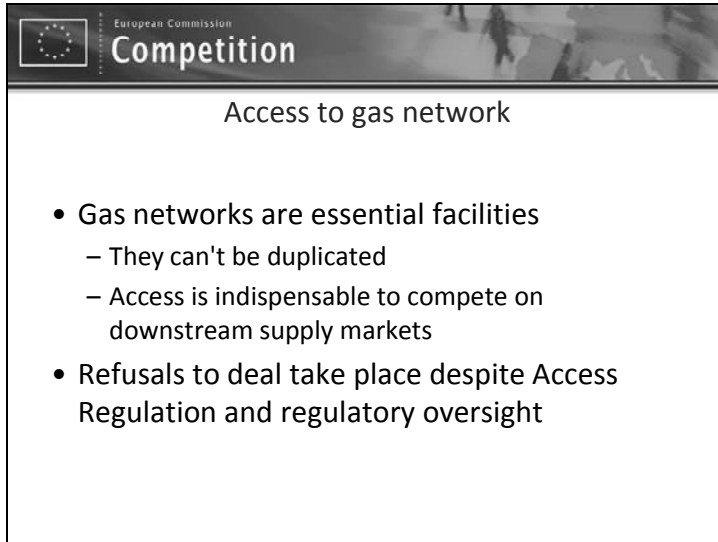


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Vertical integration in the gas sector

- Common feature in the gas industry
- At the root of foreclosure in downstream supply markets
- Regulatory solution: the third energy package?
- Competition enforcement: two examples of structural remedies

Slide 3

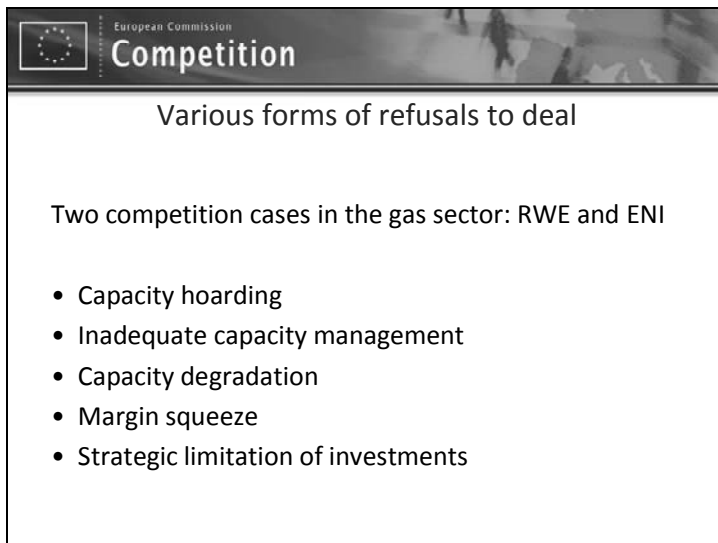


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Access to gas network

- Gas networks are essential facilities
 - They can't be duplicated
 - Access is indispensable to compete on downstream supply markets
- Refusals to deal take place despite Access Regulation and regulatory oversight

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Various forms of refusals to deal

Two competition cases in the gas sector: RWE and ENI

- Capacity hoarding
- Inadequate capacity management
- Capacity degradation
- Margin squeeze
- Strategic limitation of investments

Slide 5

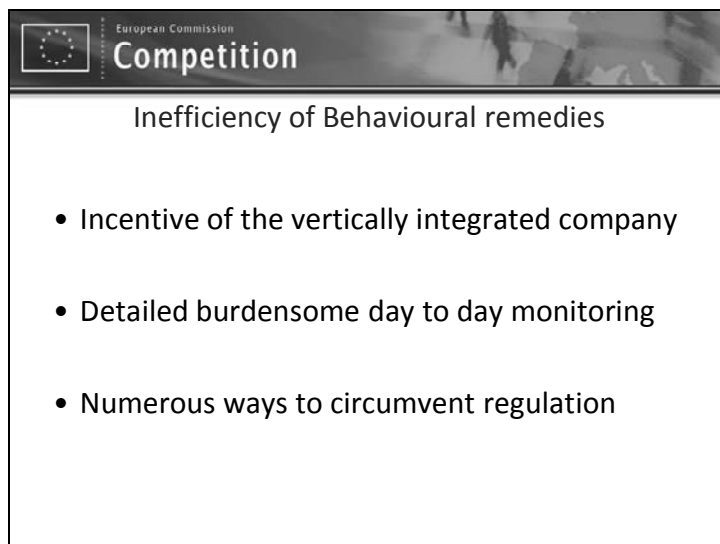


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Structural remedies in EU competition law

- To bring an end to the infringement
- Proportionate and necessary
- No equally efficient behavioural remedy
- Break-ups where there is a substantial risk of a lasting or repeated infringement that derives from the very structure of the undertaking
- Imposed or negotiated by the Commission

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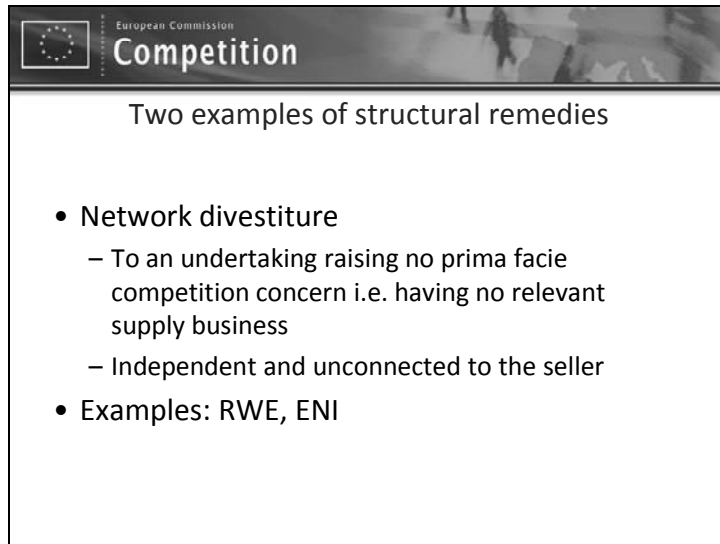


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Inefficiency of Behavioural remedies

- Incentive of the vertically integrated company
- Detailed burdensome day to day monitoring
- Numerous ways to circumvent regulation

Slide 7

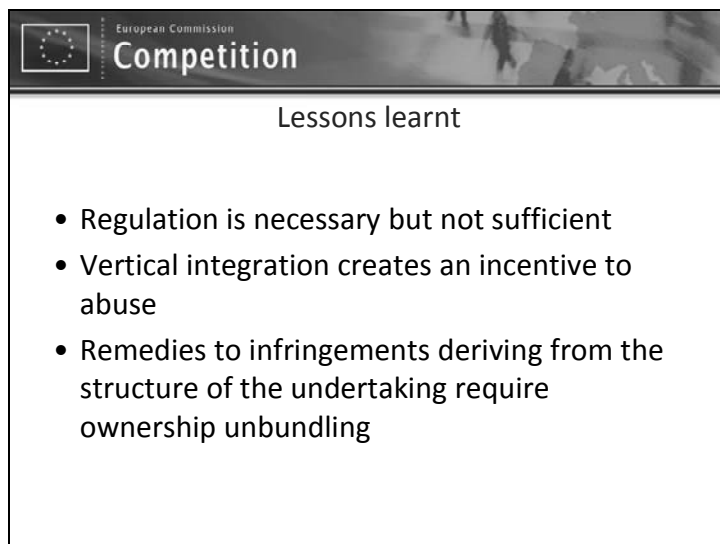


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Two examples of structural remedies

- Network divestiture
 - To an undertaking raising no prima facie competition concern i.e. having no relevant supply business
 - Independent and unconnected to the seller
- Examples: RWE, ENI

Slide 8



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Lessons learnt

- Regulation is necessary but not sufficient
- Vertical integration creates an incentive to abuse
- Remedies to infringements deriving from the structure of the undertaking require ownership unbundling

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