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Competition in Energy Markets – Summaries of Contributions

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This document reproduces summaries of contributions submitted for Item 3 of the 74th OECD Working Party 2 meeting on 28 November 2022.

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

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Summaries of contributions

This document contains summaries of the various written contributions received for the discussion on Competition in Energy Markets (74th Meeting of Working Party 2 on 28 November 2022). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Australia

In 2022, the Australian energy market has come under material pressure due to a combination of international and domestic factors. Russia's invasion of Ukraine, and disruptions to supply in international markets, have heavily impacted global gas and coal supply and energy prices. In Australia, these factors have been compounded by extreme weather conditions in the Australian winter, and reliance on our fleet of ageing coal-fired power stations.

In addition, Australia is entering a difficult stage of the energy transition, with growth in intermittent renewable technologies accelerating ahead of complementary flexible generation sources to provide power when renewables aren't available, leaving periods where supply and demand is tight and prices are high.

As the competition authority, the ACCC is committed to promoting competitive markets that will support a reliable and secure energy supply both for industry and the community.

The ACCC's role in energy markets is defined by the Competition and Consumer Act 2010 (Cth) (CCA). The CCA contains a range of functions which are relevant to competition in energy markets, including:

- monitoring and reporting on gas and electricity markets as part of our ongoing gas and electricity inquiries. In addition, the Australian government has tasked the ACCC with an active role in monitoring and reporting on current energy market conditions.
- enforcing and promoting compliance with Australia's economy-wide competition laws which provide protections from threats to the competitive process posed in energy markets.
- enforcing the Australian Consumer Law which provides economy-wide protections that prohibit false, misleading and unconscionable conduct. For example, the ACCC is monitoring retailer communications with consumers about energy cost and price increases to ensure these communications are accurate, do not contain misleading statements and that any price changes are transparent.
- monitoring and enforcing compliance with the rules on electricity market misconduct under Part XICA of the CCA. These rules ban certain conduct that harms competition and consumer welfare.
- ensuring compliance with Electricity Retail Code, which sets out sector-specific protections such as a price cap on standing offers for retail electricity supply and clear and consistent advertising of prices to consumers.

We support measures to assist consumers easily compare products, which can lead to customers receiving greater choice and greater value for money. Measures that promote this include: lowering search and switching costs, improving the portability of consumer data, and ensuring energy products and services are clearly and consistently advertised. This will help to promote competitive energy markets.

This submission outlines the ACCC's experience and perspective in relation to the above as well as the relationship with the Australian Energy Regulator (AER) and some of its initiatives to help consumers including the protection of vulnerable consumers.

Austria

Against the backdrop of sharply rising prices at petrol stations in Austria and related complaints, the Austrian Federal Competition Authority („AFCA“) initiated a sector inquiry into the Austrian fuel market on March 21, 2022. The findings of the AFCA’s sector inquiry show that the bulk of the price increases at petrol stations is due to higher international price notations for diesel and petrol. At the same time, refineries have earned significantly higher profits margins since the beginning of the war in Ukraine. In the market for vehicle fuels for small customers, the AFCA found substantially increased gross margins only for March 2022, which, however, virtually disappear in the following months and largely returned to their pre-war levels. Therefore, while international price notations have decoupled from crude oil prices, the AFCA did not find a consistent decoupling of retail prices from wholesale prices.

The analyses of the price and cost data did not reveal any salient clues of price fixing or abuse of market power, neither at the level of fuel retailing nor at the level of oil refining. International price notations can predict the evolution of petrol and diesel prices (excl. VAT and energy tax) with a relatively high goodness after the short period of uncertainty and high volatility in March 2022. Furthermore, there are no conspicuousities in the price changes or evolution of gross margins between the various subgroups in the totality of all petrol stations in Austria that would prompt a more in-depth investigation beyond the sector inquiry.

One of the most important lessons that the AFCA learned in its sector inquiry into the Austrian fuel market was the need of an in-depth understanding of both the geographically wide market for refined products and the significance of international price assessments of various petroleum products for the pricing behaviour in this market. On the one hand, price changes in this market for refined products are effectively passed through to fuel retailers, at least in the long-run, i.e. after a few weeks of adjustments. On the other hand, price reporting agencies (PRAs) seem to play a much more prominent role in the price behaviour of petroleum products than previously thought because PRAs make these prices move that petrol stations ultimately have to incur as costs. Since the market for price information services in the energy and commodities market is highly concentrated, with Argus Media and S&P Global Platts being the dominant agencies, an in-depth inquiry into this market appears to be indispensable in the future in order to better understand how PRAs assess the prices of various products and whether the market for price information services gives rise to competition concerns.

Brazil

This work presents a contribution by the Administrative Council for Competition Defense (CADE) to the roundtable “Competition in energy markets” organized by the Organization for Economic Cooperation and Development (OECD), exploring the reasons behind the price energy increases of 2021–2022 and presenting public policy discussions on how to react to these increases.

In this sense, the first section of the work introduces CADE’s organizational structure and its Merger Control regime. Sections 2 and 3 give an overview of merger reviews carried out in the electric energy and natural gas sectors and discuss how CADE defined the relevant market in these cases.

Finally, it mentions the Cease and Desist Agreement signed with the incumbent company, which established it should stop the probed practices and divest natural gas transport and distribution assets. Additionally, the contribution mentions the recent changes in the legislative and regulatory framework of these sectors and the cooperation between the Brazilian antitrust agency and the sectors’ regulatory agencies.

Chinese Taipei

The Government adopted a two-stage process to liberalize the electricity sector in Chinese Taipei. The first stage focuses on ‘promotion of green energy’ and ‘separation of power plants from the grids’. The second stage will build on the outcome of the first stage of the reform. Grey energy markets, where fossil fuels are used as a power source, will not be liberalized until regulatory frameworks and relevant markets are fully fledged. In terms of natural gas, Chinese Taipei has been historically reliant on imports. Gas-fired power plays a critical role in overall electricity production. The natural gas industry is broken down into three segments in Chinese Taipei: LNG receiver stations in the upstream segment, gas transmission in the midstream segment and gas distribution in the downstream segment.

Electricity and natural gas are considered as essential necessities of daily life, which are highly regulated by sector regulatory agencies and under respective laws, i.e. the Electricity Act and the Natural Gas Enterprise Act. Business activities in such highly regulated sectors are generally subject to ex ante regulations. The Fair Trade Commission (“CTFTC”) respects the regulatory rules and functions of these sector regulatory agencies and will not directly intervene in price determinations. The CTFTC also continues to make an effort to maintain transparent communications with the sector regulatory agencies. Nonetheless, as a competition enforcement agency, under the Fair Trade Act, the CTFTC has power to review specific business conduct in individual cases to see if they may hinder market competition in order to embody the spirit of promoting competition.

This paper covers the CTFTC’s enforcement actions and investigations in the electricity and natural gas sectors as well as its experience in reviewing mergers concerning offshore wind power. It summarizes two representative cases – an infringement decision on concerted actions among the nine independent power producers and a non- infringement decision involving three natural gas utility enterprises that allegedly attempted to reduce competition in the market for the downstream pipelines of gas meters. In respect of the first case, administration proceedings were brought by the independent power producers against the CTFTC’s decisions. The court of first instance and the court of second instance held two disparate views on whether the independent power producers compete with each other in the same market.

Regulated industries are not equivalent to the absence of competition. Certain levels of competition can be observed in the regulated energy markets. In such dynamic environments, the development and structures of the markets will inevitably be influenced by the market players’ behaviors. The CTFTC acknowledges the importance of industrial policies, but at the same time it continues to seek the right balance between competition and regulation. The CTFTC will endeavor to identify unnecessary regulatory restraints or competition-distorting rules by means of competition law enforcement and competition advocacy.

Colombia

The purpose of the Contribution is to evidence how the SIC's activity, given the role of competition advocacy stated in Law 1340 of 2009, has strengthened the competitive dynamics in the renewable energy markets.

The Contribution concludes that, due to the competition advocacy role, the SIC has helped the regulator to mitigate the risks of market distortion that may potentially arise in the regulatory process. The above, mainly through the issuance of the ex-ante opinions issued by the SIC related to the regulatory projects that are submitted for its consideration, and in which the competition authority sets out a series of recommendations to the regulatory authority. This, so that the regulator considers the adequacy of such regulatory project aligned with the perspective of free economic competition.

The Contribution is approached from the experience that SIC extracted from different competition advocacy opinions associated with the Colombian electricity market, particularly with the segment of non-conventional renewable energies (hereinafter "NRES"). In this segment, a relevant degree of acceptance of the recommendations raised by the SIC has been observed. Such recommendations were duly supported because the competition authority evidenced in such cases that some of the proposals contained within the regulatory projects could be detrimental to NRES markets.

A sample of 55 opinions associated to the NRES market was taken, which were classified according to the possible scenarios that may be considered as limiting from the free economic competition according to the Toolkit of the Organization for Economic Cooperation and Development (hereinafter "OECD"). The Contribution is distributed in five (5) sections including conclusions. In the first section, a brief characterization of the Colombian electricity market is made; in the second section, the general regulations associated with the power-generation from renewable sources (with particular emphasis on solar and wind) are described. In the third section, the Contribution addresses the most common competition problems that the SIC has identified in the regulatory projects on renewable energies.

As anticipated, the Contribution concludes that, considering the levels of acceptance of the recommendations given by the SIC to the regulators in regards to regulatory projects, the NRES markets have avoided possible market distortions.

European Union

The current energy crisis has revived the discussion about the role of competition law during crisis periods and its contribution to address the various challenges they raise. The intervention of the European Commission (“the Commission”) in the context of the ongoing energy crisis has mainly relied on a comprehensive package of regulatory measures, which aim to reduce the severe pressure of energy prices on households and businesses and to increase the resilience of the EU’s energy markets. To facilitate public support for undertakings during the crisis, the Commission has also adopted a Temporary Crisis Framework (TCF) to enable Member States to use the flexibility foreseen under State aid rules to support the economy in the context of Russia’s unprovoked invasion of Ukraine.

In this context, the Directorate general for Competition of the Commission (“DG COMP”), acting as a competition law enforcement agency at EU level, has an important role to play in addition to the policy measures to ensure that the effect of the crisis on household and business customers are not exacerbated by possible anticompetitive behaviour by market participants.

To that effect, DG COMP has been closely monitoring all developments on the EU energy markets to identify and swiftly address any conduct in breach of the EU competition rules. DG COMP is particularly vigilant to ensure that companies active in gas, electricity and related markets do not take advantage of the current crisis to engage in anti-competitive conduct that could directly or indirectly contribute to the high energy prices.

In addition, DG COMP also stands ready to support the energy industry’s efforts to address the challenges of this crisis. The Commission already issued a joint statement with the EU national competition authorities on the application of competition law in the context of the war in Ukraine (“ECN statement”). The possible need for crisis cooperation is currently also being discussed with regard to gas purchasing to help address possible gas supply shortages or disruptions in Europe. The Commission stands ready to assist gas companies in designing a gas purchasing consortium in compliance with the EU competition rules.

France

The energy sector has specific structural characteristics, which result in the need to coordinate the behaviour of a large number of players in a complex production and distribution chain. This network must then function in a manner that is sufficiently integrated to allow supply and demand to be matched at all times.

In this context, the preservation of clear and interpretable pricing signals is necessary to allow the organisation of the entire production chain, taking into account several levels of temporality: short-term supply, medium-term production decisions and long-term investments.

In France, the energy markets are characterised by the recent and progressive implementation of the liberalisation process, combined with the maintenance of a high degree of pricing regulation at different levels of the value chain (production, network and supply). In its advisory function, in markets that are open to competition but still subject to strong regulation, the *Autorité de la concurrence* takes into account the need to maintain pricing signals that are sufficiently clear to allow the preservation of effective competition over time and the transmission of adequate incentives to market participants for them to implement coherent strategies.

First of all, with regard to the pricing of access to network infrastructure, one of the main challenges, in the *Autorité's* view, is to ensure that pricing regulation does not confuse the economic signals and actually provides an incentive to invest in modernising these networks and improving the operational performance of operators.

At the production and wholesale markets stage, the *Autorité's* analysis focused mainly on the pricing regulation resulting from the ARENH mechanism and its ability to effectively resolve the competition issue related to the preponderance of nuclear production in France. Such a mechanism constitutes, by nature, a pricing signal sent both to the producing company and to the alternative suppliers who benefit from the system. The correct determination of the ARENH price is therefore a major challenge in maintaining downstream competition, but also in allowing the emergence of real competition on the upstream market by providing sufficient incentives to push competitors to invest in their own basic production facilities or develop long-term supply policies.

Lastly, the *Autorité's* analysis also focuses on the link between regulation at the supply stage (through regulated sales tariffs in particular) and the maintenance of consistent pricing signals for consumers and suppliers.

With respect to these prices, the *Autorité* has repeatedly reaffirmed its commitment to the principle of cost recovery, while indicating that this principle does not preclude a flexible approach, allowing for temporary deviations between prices and costs, while ensuring that these deviations are periodically eliminated.

Furthermore, in its most recent opinions and reports, the *Autorité* highlighted the persistent confusion regarding the purpose of regulated electricity pricing and the role it plays in the organisation of the electricity market. The public perception of regulated pricing that is supposed to be protective when it is actually a ceiling, is one of the major factors in the blurring of the pricing signal it is supposed to send to consumers and the various suppliers.

Greece

The Hellenic Competition Commission launched on March 22, 2022 a market inquiry to map out the competitive dynamics in the fuel sector. The analysis focuses on the price adjustment mechanism of three fuel products (Unleaded 95, Diesel and Heating oil) at the three levels of the supply chain in Greece (refining, wholesale, and retail sectors). It examines the ‘Rockets and Feathers’ hypothesis, *i.e.*, the asymmetric adjustment of fuel prices after identical the cost changes between stages of production and distribution.

The above market inquiry is the latest in a series of actions in the fuel industry included in the competences of the HCC (investigations, market survey, market inquiries, issue of market investigation references). Since 2012, the HCC issued two market investigations references for the fuel sector proposing measures to increase the competition level (not all proposals have been adopted).

The ‘Rockets and Feathers’ phenomenon can be due to various causes (see for example Borenstein et al (1997), Verlinda (2008), Tappata (2009), Chen et al (2019), Deltas and Polemis (2020)), such as possible anti-competitive practices (explicit or tacit collusion between competitors), but also to other causes, such as possible delays in the integration of low prices in fuel supply due to inventory constraints or asymmetry in consumer information. Furthermore, based on the relevant literature, the oligopolistic nature of each local relevant market triggers the appearance of price asymmetry.

Israel

On November 2022 Working Party No. 2 on Competition and Regulation will discuss *Competition in Energy Markets*. This Contribution will provide a look into the Israeli gas sector and will discuss recent actions taken by the Israel Competition Authority (the "ICA"), with respect to this sector. As shall be discussed below, ICA's actions in this sector, resulted in the introduction of actual competition and led to a significant change in this sector, in Israel.

Gas reserves were discovered recently in Israel, allowing Israel to become self-sufficient as well as an exporter of gas. On this backdrop, global events are not expected to have a significant impact on Israel, in this sector. However, looking back, despite of Israel's self-sufficiency, the level of competition in the Israeli gas sector was low due to the holdings structure in the existing reservoirs: One operator holds significant shares in both Leviathan and Tamar, two of Israel's largest reservoirs. This situation raised anticipative concerns.

In 2021, the Director General of the ICA (the "Director General") reached a consent decree with the operator of the reservoirs, Noble Energy Mediterranean Ltd ("Noble") (recently acquired by Chevron North Sea Limited) (the "Consent Decree"). As detailed in this contribution, according to the Consent Decree, Noble, which operates the Tamar reservoir and holds 25% of its gas, is obligated to honor the "split marketing" demands of each Tamar holder.¹ The Consent Decree was approved by the Israeli Competition Tribunal (the "Tribunal") on May 2021.

The commitments made by Noble in the framework of the Consent Decree, increased competition between Leviathan and Tamar. As a result of these competitive changes, the general public in Israel as well as gas consumers have significantly benefited.

This recently reached Consent Decree, the circumstances surrounding this case, as well as its implications on competition in the Israeli gas sector and on the public, will be discussed in this contribution.

¹AT 55428-03-03 **The Competition Authority v. Noble Energy Mediterranean Ltd** (Nevo, 27.5.21).

Italy

The energy price inflation observed in 2022 has posed several challenges for antitrust authorities. In many countries, including in Italy, policymakers, consumer associations, representatives of energy intensive industries and the public at large have asked competition authorities to intervene to stop “speculations” on energy spot markets and offer a remedy to high energy prices, regardless of the presence of actual infringements of competition law.

In response to a surge in complaints, the Italian Competition Authority (the Authority or the AGCM) launched ex-officio a monitoring activity on the fuel automotive markets aimed at investigating the main reasons behind the recent increases of the pump prices, with the expectation that this closer scrutiny would act as a moral suasion against potential anticompetitive conducts. As expected, the large automotive fuels price increases occurred in 2022 can largely be explained by the tensions in the international markets and no-country specific factor could be identified.

The Authority was also tasked by the Government with an additional monitoring activity on the application of a windfall profit tax levied on energy firms in March 2022, in order to detect any “pass through” of the tax on final prices for energy users like households and firms since this tax was intended to finance a reduction on energy bills. The note discusses the challenges raised by this new competence in terms of resources involved and implementation.

Finally, this note highlights the possible threats to the competitive process in the Italian energy markets, stemming from the current situation of high energy prices, in particular: a) a tendency, after decades of reduction, to an increase in market power concentration; b) the potential risks of anticompetitive cooperation among rival energy firms fuelled by a situation of high prices; c) the emergence of market power issues in wholesale supply of natural gas; d) the slow-down of the on-going liberalization process of energy retail markets.

Lithuania

The Note overviews ongoing liberalisation of the electricity supply market in Lithuania and relevant competition advocacy by the Lithuanian Competition Council. It shows the importance of respecting competition protection principles while opening customers' data to potential new independent electricity suppliers, questions the proportionality and usefulness of postponing market liberalisation due to tensions in international and regional energy markets as well as events in the Lithuanian independent retail electricity supply market. Finally, it highlights the remaining competition challenges when proceeding with national electricity market liberalisation, especially those linked to unprecedented rise in electricity prices.

Mexico

The Commission establishes a prioritization of sectors to direct its efforts towards those where competition can generate the greatest benefits in terms of consumer welfare. The energy sector is considered a priority sector for COFECE, which is constantly monitored by the authority in order to exercise its powers in this sector when competition concerns are identified. This contribution presents four sections which: (i) provide a brief explanation of the regulatory evolution of the energy sector in Mexico and its relationship with the process of competition; (ii) identify the main competition challenges and problems that characterize this sector in Mexico; (iii) present some actions implemented by COFECE to address competition concerns; and (iv) describe cooperation frameworks with energy market regulators.

New Zealand

The New Zealand electricity industry has some unusual features, the most notable being that our isolation requires us to be self-sufficient. Our electricity markets are the result of structural change in the 1990s, including the corporatisation of the industry and (in 1996) the establishment of a spot market for the trading of wholesale electricity. As a result of the state previously investing heavily in hydro generation, New Zealand's electricity supply has been above 80% renewable for many decades.

The New Zealand Government has an aspiration to be net carbon zero by 2050, and to be 100% reliant on renewable energy in the electricity sector by 2030. This will require the incentivisation of heavy investment in renewable electricity generation in New Zealand, in addition to other things such as increased transmission capacity and a better means of managing intermittency of renewable generation.

However, current investment in renewable electricity generation does not appear to be at a rate required to meet the Government's decarbonisation goals. Further, since 2019, wholesale prices have been substantially above the cost of adding new generation capacity. These matters have prompted analysis of barriers to entry that may be impeding new generation development.

In this paper, we firstly outline the self-sufficient nature of New Zealand's energy markets, and provide a brief history of the governance of New Zealand's electricity industry including competition and regulatory roles within energy markets. We then describe the challenge of incentivising renewable electricity generation investment to meet decarbonisation goals, and briefly outline three interesting potential barriers that may be impeding such investment.

Norway

This report gives an overview of the Norwegian energy supply system, competition and regulation in the Norwegian electricity market, measures taken in response to rising electricity prices and Norway's role in the European energy system.

The Norwegian energy supply system

Norway is in a unique position when it comes to access to renewable energy, as the country's electricity production is largely based on hydropower. A significant proportion of the profits benefit society, through state ownership and taxation. The latter has recently been subject to several proposed changes from the Norwegian Government, including introducing a tax on windfall profits.

Competition and regulation in the electricity market

The Norwegian Energy Act is based on the principles that electricity production and -trading is market-based, while grid operations are strictly regulated. The electricity market is divided into the wholesale electricity market and the retail electricity market. The Norwegian Competition Authority (NCA) observes potential competition issues, particularly in the wholesale electricity market where the largest producer in certain periods may have incentives to reduce production and thereby achieve higher prices. Because of this, the NCA has ordered notification of transactions which fall below the notification thresholds for individual firms in the wholesale electricity market.

Actions in response to rising electricity prices

The Norwegian Parliament has enacted several measures in response to the high electricity prices, including an electricity subsidy scheme for households. The Government's proposed measures for businesses in the private sector are still awaiting parliamentary approval. The proposed policy measures mainly imply subsidization of electricity consumption and there are currently no measures on the table that involve market intervention. The NCA's role in this process has been to point out whether proposed measures would impose restrictions on competition. The NCA has stressed that setting a price cap on electricity lowers the incentives for energy efficiency and -saving. This may threaten security of supply and could affect competition in the market in the long term. The Norwegian Ministry of Petroleum and Energy has commissioned several reports to study the consequences of, and measures aimed, at rising electricity prices. The main findings of the reports are summarized below.

Norway's role in the European energy system

As a net exporter of energy, Norway plays an important role in the European energy system, especially through the increased production and export of natural gas to Europe. In the short term, the most important way Norway can support the challenging energy situation in Europe is to maintain a high daily production of natural gas and to invest in new production on the shelf. In the long term, Norway may play an important role as a net exporter of renewable energy in the European power supply system, especially with sufficient competition in the energy markets to ensure continued investments in renewable energy.

Peru

This contribution briefly explores the main characteristics of liquid fuels and LPG markets in Peru. It focusses on the stages of production/import, storage and dispatch, and wholesale commercialization. The joint weight of these stages on final prices of the set of analyzed products is above 85%. How well this markets work has a main incidence in the economy.

Available information shows high levels of concentration in the stages analyzed, as well as the existence of vertical integration relationships between agents in different stages of the chain value. In addition to these characteristics, potential barriers (to entry, to expand, or to exit) could reveal risks to competition in these markets.

Recent evolution at different stages of the chain value is presented and show how the implemented policies, to face higher global energy prices, have been affecting the dynamics of local prices.

Finally, INDECOPI has started the development of a market study for liquid fuels and LPG in Peru. This effort complements other activities undertaken by the competition agency in the country.

Poland

This paper describes the position of the Polish Competition Authority (“UOKiK”, “NCA”) regarding the challenges on the energy market in Poland caused inter alia by the Covid-19 pandemic and then Russia's military aggression against Ukraine which undoubtedly created a shock on energy market, leading to price volatility, supply shortages and serious security issues. The current economic conditions are the reasons for strong pressure and additional expectations towards NCA to intervene.

The contribution starts with a short introduction and an overview of key characteristics of the energy market in Poland, followed by some information relating to measures introduced to counter the effects of energy crisis.

Then it introduces a brief description of the Polish Competition Authority's recent activities on energy market. First of all, soaring coal prices and limited supply made it necessary to examine the mechanisms of functioning of the coal market and determine whether the undertakings operating in the coal market may violate the competition law. In the course of the proceedings regarding the study of the hard coal distribution market (especially for households), an inspection was carried out which covered coal depots throughout Poland. UOKiK has also taken steps to clarify the reasons for such a large increase in fuel prices - whether, in addition to market conditions, potential anti-competitive behaviour may have occurred. UOKiK asked Polish refineries for information concerning their sales policy and examined the method of calculating wholesale and retail prices of fuels and model refinery margins.

Although competition policy is not a tool to combat soaring energy prices, crisis environment can give cover to companies with market power to exploit that power or tempt entrepreneurs to enter into any anti-competitive agreements with competitors. Therefore, competition authorities cannot hesitate to investigate cases in which price rises might be caused by anticompetitive conduct, not exclusively by market conditions.

Portugal

The Portuguese Competition Authority – Autoridade da Concorrência (AdC) has been closely following the energy sector.

Between 2015 and 2021, the AdC adopted five decisions regarding antitrust investigations in the energy sector. In three of those decisions, the AdC identified and sanctioned prohibited practices, imposing fines that total 95.59 million euros.

In the same time span, the AdC adopted 37 decisions regarding mergers in the energy sector. The AdC cleared all those mergers, in three cases subject to compliance with commitments that address the competition concerns identified by the AdC, including divestment and/or behavioural measures.

Additionally, the AdC has undertaken a variety of advocacy initiatives in the energy sector. More recently, these initiatives aim at contributing to the recovery of the Portuguese economy following the Covid-19 pandemic and the conflict in Ukraine. In particular, those advocacy initiatives aimed at promoting competition and efficiency in the market, to the benefit of consumers, in terms of prices and quality of service. The AdC also strove for promoting changes in the levels and patterns of consumption.

In the electricity sector, the AdC has been focusing on the promotion of entry in the ancillary services market. Likewise, the AdC has emphasized that the (progressive) liberalization of the retail electricity market is put at risk by the postponement of the transitional regime equivalent to regulated tariffs, alongside with the possibility of consumers to return to such regime. The AdC has also argued for the need to avoid unnecessary costs, that could burden consumers further.

In the natural gas sector, the AdC has highlighted the need to deepen the integration between the Portuguese and the Spanish wholesale gas markets. The AdC has also argued for fostering the use of the Liquefied Natural Gas (LNG) Terminal in Sines by small-scale operators and the auctioning of part of the annual planning of LNG carriers with delivery point at such terminal foreseen in the long-term take-or-pay contracts signed before August 2003. Additionally, the AdC has argued for the need to control costs.

In the bottled liquefied petroleum gas (LPG) sector, the AdC has emphasized the relevance of effective access to relevant LPG storage facilities and of harmonization of the LPG bottle reducers. Also, the AdC has argued that solidary tariffs allow to pursue public interest goals regarding economically vulnerable consumers, while minimizing the risk of distortions to competition vis-à-vis other measures.

In the road fuel sector, the AdC has focused on imports and storage of road fuel.

Regarding the (temporary) measures adopted by the Government to address the challenges brought about by the recent price increases in the energy sector, the AdC has highlighted the relevance of competitive neutrality of public policy measures. Furthermore, the AdC has advocated for the adoption of structural measures. The AdC has also defended that measures such as granting direct support to the most affected households and companies and lowering the tax burden are less likely, in general, to distort competition than more interventive measures in the market.

Some of the recommendations issued by the AdC in the energy sector have been implemented, improving the competitive dynamics in the sector and, consequently, benefiting consumers.

Romania

In this document we show how market monitoring and continued advocacy came very handy to the Romanian Competition Council (RCC) when the energy crisis struck. Market monitoring as a regular task has been implemented for a few years for key energy sectors, while advocacy efforts of different kinds are made continuously by the RCC in a wide range of sectors. The sector inquiry on natural gas conducted by the RCC since mid-2020 receives special attention in this contribution, not only because it bridges market monitoring and advocacy, but also because it illustrates the impact of the energy crisis on the deregulation of the Romanian household gas market.

In the first section, we discuss briefly the recurrent market monitoring conducted by the RCC in key energy markets and some of the advocacy efforts the competition agency has made during the crisis. Since 2016 the RCC has conducted internal recurrent monitoring for the electricity, natural gas and fuel markets. This continued effort has proved to be particularly useful in late-2021 and during 2022, when RCC's analyses have shown both internally and to third-parties that the high and volatile energy prices were not affecting only Romanian consumers, but the whole region, and that most factors behind those prices were outside the control of the Romanian authorities.

In such complicated times, there was a nearly tangible pressure on the RCC to respond, which was felt both directly and indirectly. The direct pressure came especially in the early stage of the crisis, when some observers have circulated the idea that the high energy prices were the result of a cartel (several cartels actually, as prices were increasing in different markets). By relying on its internal analyses, the RCC was able to communicate on the crisis coverage and motives, thus alleviating these worries. The indirect pressure came later on, when the crisis unfolded even further and some policymakers seriously considered regulating energy markets. In this context, the RCC offered advice to Romanian authorities, commented on the numerous legislative projects issued over the past year and proposed measures in line with sound key principles. We like to believe that RCC's involvement in this process has led to the adoption of strictly better measures than otherwise.

In the second section, we discuss the impact of the energy crisis on the final stage of the liberalization in the Romanian gas sector. By serendipity, the RCC had a sector inquiry ongoing when the energy crisis unfolded. This is because in mid-2020 Romania has removed regulated prices for household consumers of natural gas and the RCC started an inquiry to follow this process. Hence, for slightly more than one year, we were able to observe the benefits of deregulation: new suppliers entering the household gas market, diversification of gas offers, and, most importantly, prices going below the previously regulated level, following the trend of that period. Even though the pace of deregulation was not spectacular, due to an apparent disengagement of Romanian household consumers in the process, the prospects were definitively positive.

The deregulation process was profoundly affected by the drastically changing condition in late 2021 and the impressive development of the energy crisis in 2022: prices have soared, some gas suppliers have collapsed, searching for better offers has become futile, while some blamed the liberalization itself for the crisis. Corroborated with a rather low level of information available to Romanian households, the new reality may have shaken consumers' confidence in the deregulation process. This may act as an additional hurdle later on, when the current crisis will be over and the liberalization will be back on track. At that stage, the RCC will need to be deeply involved in an extensive information campaign, defending the principle of deregulation, disseminating the expected benefits of liberalization and trying to convince the general public

that historic-high gas prices were not caused by deregulation, but rather by decisions made further East.

Spain

This contribution describes the impact on competition of the energy crisis in the Spanish energy sector and the performance of the energy measures undertaken in Spain.

Spanish high exposition to the energy prices moved the authorities, from the early stages of the crisis, to undertake several temporary measures to contain energy costs and spot electricity and gas prices, which appear to have reduced costs and energy prices in the short run.

In particular, the Iberian exception to relax gas price impact on the electricity sector has successfully contained Spanish spot and forward electricity prices compared to other northern marketplaces. The new rule requires gas power plants to determine the market bids based on a reference gas price of 40 €/MWh. Electricity demand pays the difference between the effective gas price and the reference gas price, which is compensated later to these plants. Initial analysis shows that the mechanism has not distorted the consumption of gas or other technologies production, and it has avoided inframarginal technologies to benefit from high gas prices more efficiently than windfall profit detraction measures. Abnormal higher exports to France were recorded.

Measures to encourage peer-to-peer contracts in electricity seem to have lowered the electricity bill for final consumers but have failed to promote long-term contracts with small retailers.

The cap for household regulated gas prices to a maximum of 5% quarterly increase is expelling independent gas retailers from the market as they claim not to find ways to replicate the regulated price.

Regarding motor fuel distribution, as international supply options have almost disappeared, independent brands find it harder to negotiate with national suppliers. Some still hold long-term supply contracts but fear future negotiations as the crisis is extending. Fuel bonification has reduce average final prices of fuel.

In short, the energy crisis has not equally affected all competitors.

Independent retailers can not survive in such volatile markets doing business as usual. The competitiveness of small retailers is disappearing as the financial cost of long-term coverages has increased or is illiquid, and they have suffered prime risk downgrade. Independent retailers claim that some temporary measures undertaken by the Government have undermined their competitive position and failed to protect their business model.

On the other side, integrated supply, production, and retail companies, such as incumbent operators, are increasing their market shares as they enjoy market instability natural coverage. They have delivered growing benefits since the beginning of the crisis. In particular, oil companies have enlarged the refining spread linked to Russian refining production import cuts.

The renewable sector is quickly progressing. New deployments of plants and self-consumption have increased, although distribution grid capacity and potential conflicts of interest with integrated operators might delay further improvements. Nevertheless, the renewable sector benefits from the crisis and will be one of the future runs to gain stability in the energy field.

Türkiye

The competitive outlook of the fuel sector is frequently brought into the Competition Authority (Authority) agenda due to its significance stemming from its key role in the economy. In that context, and as part of its duty and responsibility to establish and protect competition in the market, the Authority conducted various preliminary inquiries and investigations on undertakings operating at different levels of the fuel sector such as refinery, distribution and dealership, as well as a number of merger/acquisition files concerning licensed storage activities. Additionally, sector examinations were carried out to better monitor the functioning of the sector and identify potential problems. As a result of all of these studies, the Authority presented several suggestions to the regulatory authorities in the fuel market in order to establish effective competition in the sector.

To begin with, the submitted contribution addresses the investigations conducted in the fuel sector. In that framework, it includes Competition Board decisions assessing claims of resale price maintenance, which is a vertical infringement, as well as claims of joint price setting, which is a type of horizontal infringement.

Afterwards, the contribution refers to several opinions sent by the Authority to the regulatory authorities in the fuel sector to ensure the establishment of a more effective fuel sector. In that context, one of the included Authority opinions suggests that changing the methodology the current market leader of the Turkish refinery market TUPRAŞ uses to determine prices could help establish prices that are more competitive.

Lastly, it is noted that the recent amendment concerning the terms of trade between the distributors made to the Petroleum Market Law no 5015, which regulates the fuel market in Türkiye, could have negative effects on the functioning of the competition in the market due to over-regulation.

Ukraine

1. The electricity markets

Electricity is one of the strategic, essential goods, without the proper balance of which the smooth operation of other sectors of the economy and the way of life which is common for society are impossible.

The integration of the United Energy System (UES) of Ukraine into the pan-European energy system ENTSO-E is provided for by the Association Agreement between Ukraine and the EU. On March 16, 2022, one of the key events of Ukrainian energy took place: the national energy system merged with the European Network of Transmission System Operators for Electricity.

On March 30, 2022, the first export of electricity from Ukraine to Europe after synchronization began. The total amount of distributed bandwidth capacity was more than 1000 MW (Poland – 210; Moldova – 600; Romania and Slovakia – 300). The next step after the technical synchronization of the energy systems of Ukraine and continental Europe is the synchronization of the European and Ukrainian energy markets.

In 2021, the AMCU, in conjunction with the NEURC and the Ministry of Energy of Ukraine, processed more than 63 regulatory and legal acts, which were aimed to foster competition in the relevant market.

2. Natural gas markets

Natural gas markets are of strategic importance for the economy of the state, and are also socially important.

The AMCU constantly monitors the actions of natural gas market participants for compliance with the legislation on the protection of economic competition, and recent years have not been an exception.

The introduction of a full-scale natural gas market involves the intensification of competition between natural gas suppliers in order to gain advantages through their own achievements, as a result of which natural gas consumers have been given the opportunity to choose between several natural gas suppliers.

Despite the martial law in Ukraine, the AMCU continues to monitor natural gas markets and undertakings operating on them.

To sum up, regulation of energy markets in Ukraine currently is aimed at stabilization of situation that appears on the markets, namely:

1. The extension of PSO mechanism
2. Connection to ENTSO-E system

United States

This submission discusses competition in U.S. electricity markets, with a focus on the transmission sector. In recent years, there has been increasing interest in expanding the U.S. electricity transmission network to accommodate a shift toward renewable resources, which are often located far from centers of electricity demand. To the extent the transmission network is expanded, competition in wholesale electricity markets is enhanced by enabling more generators to compete with each other. Recently, the U.S. Department of Justice (“DOJ”) and the U.S. Federal Trade Commission (“FTC”) (collectively, the “Agencies”), consistent with their effort to collaborate with other federal agencies to ensure that they appreciate the implications their policies have on competition in the markets they regulate, have engaged in competition advocacy urging the use of competitive processes for the construction of certain regional electric transmission facilities.

This paper first provides a broad overview of U.S. electric power markets and discusses the role of the Agencies in maintaining and promoting competition within these markets. Next, the paper examines competition issues related to electricity transmission.