UNITED NATIONS - ECOSOC
ECONOMIC COMMISSION FOR EUROPE
W0RKING PARTY ON GAS

GAS TO POWER
COMPETITION ASPECTS

Walter TRETTON
European Commission
DG COMPETITION

Geneva, 24 January 2006

GAS TO POWER

Some Competition Aspects –INTRO (1)

STRUCTURE OF PRESENTATION

ANTITRUST AREA – Art.81 and 82

- Use restrictions
- Duration of Contracts/Exclusivity
- Sector Inquiry

MERGERS – ECMR

- Vertical and horizontal aspects
- EDP/ENI/GDP
- E.ON/MOL

GAS TO POWER

Some Competition Aspects – INTRO (2)

NOT ADDRESSED IN THIS PRESENTATION:

- State Aid
  - Stranded costs
  - Aid to Incumbents operating gas - fired Power?
  - Environmental Aid to CHP plants?
- Trade Defence ⇨ Responsibility of DG Trade
  - EU-Import of subsidised electricity?
  - Currently direct electricity imports are very small
  - Indirect imports: electricity-intensive goods

ANTITRUST (1)

1) USE RESTRICTIONS

Clauses in supply contracts which e.g. relate to

resale prohibition

resale restriction to a certain user group

territorial restriction of resale

No go area: considered hard-core restrictions

excluded from application of Block Exemption Regulation, Art.4 b

exceptions unlikely to be applicable to gas to power relationship

Individual exemption unlikely

If dominance: likely to constitute abuse under Art.82 EC

- GDF cases in 2004 (GDF/ENI, GDF/ENEL)
  relating to territorial restrictions
- Gas Natural/Endesa (2000)
  contained user group restriction element

ANTITRUST (2)

2) LONG-TERM EXCLUSIVE CONTRACTS

Obligation which requires buyer
to purchase > 80% from the seller, if > 5 years

Excluded from Block Exemption Regulation
(30% safe harbour threshold does not apply)
Individual exemption under Art 81(3)?
Unless undertaking is dominant.

2 cases:

- Gas Natural/Endesa (2000)
- Synergen (2002)

ANTITRUST (3)

- GAS NATURAL / ENDESA (2000)
  - **Agreement** to supply power plant
  - **Gas Natural** held a **dominant position**
  - **Infringements**:
    - Long-term, de facto exclusivity
      - ⇨ Creation of barriers to entry : foreclosure effect
    - Own use requirement for plant= resale restriction
  - **Remedies:**
    - Reduction of volumes by 25%
    - Reduction of duration: 12 years (instead of 18)
    - No resale restriction after start up period
    - Modification of discrimination clauses

ANTITRUST (4)

- SYNERGEN (2002)
  - **Joint ownership of Irish power plant**
  - **Electricity: ESB** -dominant; **Statoil:** likely entrant
  - **Infringements**:
    - Elimination of potential competition : non compete clause
    - Exclusivity: Statoil prevented from selling to others-foreclosure
  - **Remedies**:
    - Sale of 600 MW until additional sources of 400MW
    - Non compete obligation for Statoil eliminated
  - **Duration**: unchanged, 15 years
    - Statoil‘s participation in the plant (30%) played a role
    - Statoil‘s share only slightly above *de minimis* threshold
    - Statoil: First long-term contract in Ireland: ensured entry

ANTITRUST (5)

3) SECTOR INQUIRY

- FIRST RESULTS: ISSUES PAPER, November 2005
  - No specific focus on gas to power
  - But results obviously have an impact
  - E.g. Gas:
    - Long-term contractual relations/customer foreclosure
  - E.g. Electricity:
    - Market power linked to generation portfolio
- NEXT STEPS:
  - Presentation of Preliminary Report; Consultation
  - Findings: Energy Council end of 2006

MERGERS (1)

- Substantive Test
  - SIEC: significant impediment to effect. comp.
  - Dominance: creation or strengthening
- Horizontal aspect:
  - Elimination of actual or potential competition
- Vertical aspect:
  - Input Foreclosure or Customer Foreclosure

MERGERS (2)

- **EDP/ENI/GDP (2004)**
  - Both vertical and horizontal aspects
  - EDP dominant in electricity, GDP dominant in gas
  - Horizontal: Elimination of potential competition
    - GDP most likely entrant into electricity generation
    - EDP very likely entrant into gas supply
  - Vertical: Foreclosure
    - Customer foreclosure
    - EDP disappears as a buyer
    - Aggravated by EDP‘s influence over competitors
  - Remedies insufficient: e.g. no divestment of power units

MERGERS (3)

- **E.ON / MOL (2005)**
  - Only vertical aspects
  - MOL (acquired parts) dominant in gas wholesale
  - E.ON: gas retail and electricity generation
  - Problems in gas:
    - Strengthening of wholesale position
    - Foreclosure of retail gas competitors
  - Problems in electricity
    - Input foreclosure of gas-fired power competitors
  - Remedies: unbundling; gas release

MERGERS (4)

- **OTHER GAS/ELECTRICITY MERGERS**
  - E.ON/RUHRGAS: national competence
  - GAS NATURAL/ENDESA : national competence
  - DONG/Elsam/Energi E2: EU competence,
    - pending (Deadline March 2006)

=> No substantive comment possible

=> Confirm high gas-to-power and power-to-gas incentives

ANTITRUST / MERGERS
COMMON ASPECTS

- Market definition
  - Is supply of gas to power plants a separate market?
    - View taken in EDP/ENI/GDP and E.On/MOL
    - Already discussed in Gas Natural/Endesa (2000)
  - Or part of wholesale m., large industrials m., or both?
- Dominance
  - When does incumbent lose its dominance?
    - Presumption of dominance:50%
    - Market dynamics & characteristics considered; vertical links!
  - Often argued by incumbent; so far no such finding

Thank you for your attention!

<u>Contact:</u>

Walter.Tretton@cec.eu.int

Disclaimer:

Presentation reflects views of the Speaker
not of the European Commission