

## Table of Contents

- » Editorial
- » Antitrust in the Energy Sector

HY OGEL special on *Antitrust issues in Energy* prepared by:



**Prof. Nicolas Petit**  
 University of Liège  
 (Belgium)

[View profile](#)

### EDITORIAL

#### OGEL Special Issue - Antitrust in the Energy Sector

*Professor Nicolas Petit,  
 University of Liège*

##### Editorial

This Special OGEL issue on "*Antitrust in the energy sector*" is devoted to the challenges arising from the implementation of the antitrust laws across various energy sectors. While this Special spans a range of countries, its primary focus is on the European Union ("EU") and the United States ("US"). This is natural considering the strong antitrust law traditions on both sides of the Atlantic, as well as the current leading position of the EU and the US authorities within the global competition community.

To start with the EU, the energy sector - deemed to represent a value of total retail sales superior to € 500 billion per year - has occupied a prominent position on the antitrust agenda. Accordingly, gas and electricity are clearly areas where antitrust enforcement has been the most pervasive in recent years. In addition to the very significant sector inquiry 2005 - 2007 and the cases that are now resulting from that inquiry, the remedies (e.g. divestiture of significant network assets in the *E.ON* and *RWE* cases, Gas release commitments in the *Distrigaz* case, virtual power plants, etc.) that have been ordered by the European Commission ("the Commission") in the energy sector have sparked a lot of controversy. Even so, the clear trend in the competition law enforcement has been towards an increasingly forceful application of EU competition rules. The papers published in this Special offer fresh, critical, thoughts on those issues, and cover topics such as long-term exclusivity contracts, third party access and security of supply issues to exchanges of information, commitments and settlements in the energy industry. Also the interplay between competition law and sector regulation is addressed in several articles. Finally, a number of paper shed light on the very significant case law of national agencies and courts in the energy sector.

Whilst the EU seems to lean towards increased antitrust intervention in energy markets, including access issues, downstream markets, LNG imports, etc. other jurisdictions, such as the US, have apparently endorsed less intrusive approaches (as a result, amongst others, of US Supreme Court decisions such as *Trinko*). This being said, in recent years, the US antitrust agencies have taken enforcement initiatives which are of direct relevance for both the energy industry and even the OPEC as an institution. Issues addressed in this Special include a discussion of whether the scope of the US antitrust rules should be extended to the whole industry and OPEC in particular. It offers *inter alia* thoughts on the risks arising from private litigation in the US; on the Federal Trade Commission's investigations into petroleum pricing; on the added value of rules prohibiting market manipulation, etc.

Finally, two papers shed light on how other jurisdictions carry out antitrust enforcement activities in the energy sector, thus providing a very insightful comparative hue to this Special. Those papers focus in particular on Canada's merger enforcement policy in the energy sector and on the sector specific regulatory framework in Japan.



OGEL is supported by  
 the **IBA** and **CEPMLP**

Put simply, this OGEL Special issue demonstrates that antitrust matters. The antitrust rules encompass a myriad of energy players' business practices, ranging from structural M&A transactions and joint ventures, to exchange of information and promotional activities, at all levels of the supply chain. Importantly, and perhaps with the exception of the US, in most jurisdictions the existence of a sector-specific regulatory framework often provides no shield against antitrust law exposure. Hence, energy firms should be aware that the enforcement of the antitrust laws may trigger hefty fines, very significant structural remedies, endless and burdensome follow-on private enforcement actions, etc. In addition, antitrust proceedings disrupt firms' daily business operations, convey negative reputational effects and inspire distrust in capital markets. Whilst there are significant differences in the various national approaches explored in this Special, a common, underlying, belief is that free competition drives energy prices down and delivers consumer welfare. In the aftermath of an unprecedented economic recession and still far from the emergence of alternative, affordable, eco-friendly energy technologies, prospects of vigorous, proactive, antitrust enforcement in the energy sector are strong.

Nicolas Petit

## Two New Precedents in the EU Natural Gas Markets - EU Competition Law and Network Foreclosure

Kim Talus,

*UCL School of Energy and Resources, Australia (UCL SERAus)*

### Introduction

The European Commission competition law enforcement has over the years both grown bolder and become more sensitive. Where the Commission would previously apply the competition law rather mechanically and without much understanding of the dynamics of the energy markets, the recent case law suggests a clear change in this respect. The first clear signals of a new approach in the energy sector came with the Sector Inquiry and concerned the downstream long-term natural gas contract cases, Distrigaz[1] being the most significant and undoubtedly functioning as the "guidance in an appropriate form on the compliance of downstream bilateral long-term supply agreements with EC competition law" that was promised by the Commission.[2]

### Footnotes

[1] COMP/B-1/37966 - Distrigaz (OJ 2007/C 77/48).

[2] See section 5.5 of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas (COM (2007) 529, 19 September 2007): "To reduce uncertainty on the market, the Commission will, in the coming months, provide guidance in an appropriate form on the compliance of downstream bilateral long-term supply agreements with EC competition law."

 [Full article here](#)

## Security of Supply Argument in the Context of EU Competition Law

Kim Talus,  
*UCL School of Energy and Resources, Australia (UCL SERAus)*

### Introduction

The security of supply argument can be understood in two very different ways in the context of EU competition law, Articles 101(3) and Article 102 TFEU (ex articles 81 and 82 EC) in particular. It can be regarded as coming close to an economic and quantifiable defence based on investment costs and the need to secure the significant relationship specific sunk costs necessary to set up a highly capital intensive natural resource project, be it a greenfield natural gas project or a pipeline project.[1]

However, this is not always the case, especially given that gas field production is less and less relationship-specific. In the past, a long-term contract could cover the production of an entire field but such depletion contracts are not widely used anymore.[2] Where the long-term contract is not tied to an investment, the security of supply argument can be used as a more general defence. The question of non-economic gains or non-quantifiable gains emerges here. Similarly, the counterfactual poses significant problems.

This paper will start with a brief discussion on non-economic gains in the context of EU competition law, Articles 101 and 102 TFEU in particular. Thereafter the security of supply defence will be discussed in more detail. However, before engaging in analysis of Article 101(3) TFEU, a preliminary issue must be tackled, the bifurcated nature of Article 101 TFEU and the role, of Article 101(1) and 101(3) TFEU respectively. In this context, the applicability of the EU type of rule of reason becomes relevant.

### Footnotes

[1] Security of supply argument under Article 101(3) TFEU is understood in this sense in, among others, L. KJOLBY, "Vertical agreements", in C. JONES, EU Energy Law: EU Competition Law and Energy Markets (Leuven: Claeys & Casteels 2007), p. 234.

[2] A distinction can be made between depletion-based contracts and supply-based contracts based in source specificity of the first option to a more general exports of a given country or producer. In the first mentioned option, the supplier commits to produce all or a predetermined percentage of the economically recoverable volumes of gas from a given gas reserve. In the supply-based contract, delivery only refers to quantities specified by the seller to the buyer without any linkage to a particular field. (For a comparison of the two contract types, see P. ROBERTS, Gas Sales and Gas Transportation Agreements (London: Sweet & Maxwell 2008), p. 48 - 50.) With gas market liberalisation, more mature natural gas pipeline networks and larger production volumes, it seems as if the supply-based agreement will dominate the future markets.

 [Full article here](#)

## **Relationship Between General Competition Laws and Sector Specific Energy Regulation**

*Kim Talus,  
UCL School of Energy and Resources, Australia (UCL SERAus)*

*Petri Kuoppamäki,  
Nokia*

### **Introduction**

The field of law that we call European Energy Law is a mixture of two interrelated legal regimes: the sector specific energy market regulation and the general EU law, competition law in particular. While also other areas of EU law, such as the provisions on state aid, free movement of goods and services, freedom of establishment and general principles of EU law, just to name a few, have a significant effect on the energy markets, the role and significance of EU competition law, in particular, has increased after the initial efforts towards opening of the markets.[1]

While there are similarities in the objectives of EU competition law and the sector specific regulation, there are also significant differences between the two, both in terms of substance and application.[2] Both regimes are reflections of the belief that free competition can provide efficiencies that benefit the consumer.[3] A critical difference between the two is that while the objectives of EU competition law are the promotion of a competitive market economy and the promotion of integration of the common market,[4] the objectives of sector specific regulation may include other and broader social objectives such as consumer protection or sustainable development of the society. Such non-economic goals are not directly part of the current EU competition law objectives.

Given that the objectives of the two regimes are very similar and that many of the issues that competition law can regulate, may also be regulated through sector specific regulation (and vice versa) and given that this concerns in particular access to networks, the relationship of the two must be examined. This is not only interesting from a theoretical or academic perspective. It also has direct applications in practise. The same question may be regulated through both sets of rules and in some cases, the objectives of these rules might call for a different outcome. This relationship has also been discussed in the case law of the European Court of Justice, including the Court of First Instance.[5] This relationship has also proved to be critical for the outcome of certain cases. The next sections will first examine the issue at a more abstract level and then focus on the relevant case law from the CFI.

### **Footnotes**

[1] Initially, the most significant Article arguably included the provisions on free movement of goods and state monopolies. After the fundamental change, from state to market, had been (partially) realised, the role of the competition law increased.

[2] The competition Commissioner Neelie Kroes illustrates this by describing these two set of rules as close relatives and noting how the relationships between close relatives are always complicated. See

Neelie Kroes, "The interface between regulation and competition law" at the Bundeskartellamt conference on 'Dominant Companies - The Thin Line between Regulation and Competition Law, Hamburg, 28th April 2009 (SPEECH/09/202).

[3] For discussion on whether the competition law should or is aiming at total welfare or consumer welfare, see M. MOTTA, *Competition Policy - Theory and Practise* (New York: Cambridge University Press 2005), p. 17-22.

[4] See for example, BELLAMY and CHILD, *European Community Law of Competition*. London, 2001, p. 39.

[5] In particular, Case T-271/03, Deutsche Telekom v. Commission, judgement of 10 April 2008 and T-87/05, EDP v. Commission [2005] ECR II-3745.

 [Full article here](#)

## **Sharing Data in the Energy Sector: What Companies Can, Cannot and Should Do Under Competition Law**

*Wim Vandenberghe,  
DLA Piper UK LLP (Brussels)*

### **Introduction**

In today's European energy industry, partial ownerships, asset swaps, VPP's, profit sharing mechanisms and the use of joint ventures or projects are quite common. While these business structures may enable energy players to achieve costs savings, access to capital or expertise, a broader economic reach or economies of scale or scope, these collaborations may equally create antitrust concerns. One of these risks is when companies are sharing information.

With almost all corporate data nowadays being created electronically, the proliferation of computers and the development of low cost storage has resulted in an information explosion. The amount of potentially relevant data involved in competition cases has grown exponentially. In the energy sector this is further increased by the economic characteristics of the energy market (in particular market consolidation and access to transmission and distribution infrastructure) and the EU regulatory environment which puts the fundamental structures of a competitive internal energy market in place and makes a division between regulated and competitive elements of information exchange.

At one end of the spectrum there is information sharing which constitutes in itself a threat to competition or which is the adjunct of an anti-competitive practice such as a cartel. At the other end, there is pure technical information exchange relating for example to infrastructure sharing or other operational activities. In the middle, there are agreements such as cooperation agreements which may entail the exchange of information on a variety of matters.

This article outlines the legal framework for analysing data sharing conduct by companies active in the energy industry, under EC competition law. It also describes the conduct at issue in recent enforcement actions by the European Commission. The aim is to shed light on what is black, what is white, and what is grey in this not so clear (one could say confusing) area of the law and to help companies avoid antitrust liabilities by giving practical guidelines when sharing data.

The article will first give a brief overview of the relevant sector-specific rules on data sharing (part II). Part III will discuss the application of EC competition law on data sharing. With these general principles in mind, the practice of data sharing in the energy sector will be tested against the antitrust rules (articles 101 and 102 TFEU) and the merger control rules in part IV. Part V concludes.

[Full article here](#)

## The Emerging Strategy of the European Commission on Long-term Energy Supply Contracts: Is the New Methodology truly 'More Economic'?

*Adrien de Hauteclercque,  
European University Institute, RSCAS*

### Introduction

This paper aims to assess the emerging strategy of the Commission on long-term supply contracts in the light of the recent modernisation of EC competition law, in particular with regard to the so-called 'more economic' approach. In short, the modernisation aimed at implementing a 'more economic' approach based on long-term consumer welfare, which meant gradually shifting from a more (allegedly) legal 'form-based' analysis of contracts to a more 'effect-based' approach where the real economic effects of competitive behaviours become more important than the drafting of contracts. Attempting to tailor enforcement to the specificities of each case has obvious consequences for energy markets. Applying a sort of rule of reason is indeed already a challenge for competition authorities in most sectors.

Section I and II will depict the methodology which is emerging from the recent line of cases. Section III will then consider to what extent the 'more economic' approach truly has an influence on the enforcement strategy of the Commission.

[Full article here](#)

## Waiting for the Polish Trinko

*Aleksander Stawicki,  
WKB Wiercinski, Kwiecinski, Baehr*

### Introduction

Polish Supreme Court rendered recently a precedent judgement referring to the complex relationship between the national competition (antitrust) law and the sector specific energy law.

The Supreme Court overturned the Court of Appeals' judgement that upheld the decision of the Polish competition authority (President of the Office of Competition and Consumer Protection) whereby the authority held that a refusal to provide access to the gas transmission network was an abuse of a dominant position on the relevant market. Accordingly, the case will be heard again by the lower court.

[Full article here](#)

## A Review of the Italian Competition Authority Commitment Decisions Regarding the Energy Sector

*Dr. Michele Giannino,  
Desogus Law Office*

### Abstract

The AGCM quite often relies on the commitment procedure. This is a convenient tool to address competition problems, especially those affecting highly concentrated markets as the energy sector. In this field the AGCM so far has closed four investigations by means of a commitment decision. Two of them were over exploitative conducts, and the AGCM was happy to accept a set of behavioral commitments from the parties concerned (*Morosità Pregresse and Pace Strade/Toscana Energia*).

The other two (*Anti-Competitive Conduct on the Power Exchanges, Regasification*) regarded exclusionary practices, to address which the parties had to offer AGCM energy release programmes, such as divestiture of virtual power plants and gas release. Incidentally, under Italian Competition law, *Anti-Competitive Conduct on the Power Exchanges* was the first competition case to be settled with a divestiture of virtual power plants. Importantly, the AGCM did not refrain from applying the commitment procedure even to foreclosing conducts, as those investigated in *Anti-Competitive Conduct on the Power Exchanges* and *Regasification*, which were thought to have serious anti-competitive effects on the markets affected.

[Full article here](#)

## **Key issues for the energy sector in the coordinated defence of parallel US/UK/international antitrust proceedings**

*Roderick Stewart Lambert,  
Layne E. Kruse,  
Fulbright & Jaworski L.L.P.*

### **Introduction**

Imagine for a moment that you are the director of an oil & gas company active on the European energy market. You are pulled out of an important meeting abroad to have a conference call with the rest of the board, the in-house legal team and the company's external lawyers. They inform you that the company has been 'dawn raided' by the European Commission (the "Commission"), which has uncovered evidence of potential antitrust violations: informal agreements made by senior executives with one of your competitors not to sell products below a certain price. They explain that the Antitrust Division of the US Department of Justice ("the DoJ") is conducting an investigation in parallel with the Commission.

If the allegations are substantiated, the company could be subjected to very large fines from both the Commission and the DoJ as well as becoming subject to civil litigation. The senior executives may be prosecuted in the EU or may even be extradited for prosecution and possible incarceration in the US. The senior executives may also be fined and exposed to civil litigation, including US class actions, and may be disqualified from acting as a director for a period of up to 15 years. Are you worried yet? If not, you should be.

This article examines the key issues which European energy companies need to consider in the coordinated defence of parallel US/EU/International antitrust proceedings.

[« Full article here](#)

## **Nopec Goes Bananas: How the Supreme Court Will Thwart Congress's Attempt to Extend U.S. Antitrust Law's Extraterritorial Reach**

*Scott Looper,  
Dewey & LeBoeuf LLP*

### **Introduction**

Assuming, arguendo, that the President would sign NOPEC into law, this paper explores the potential for its success in the American legal system. In the second part, the author describes things as they currently stand, explaining OPEC's motivations and effects, outlining current U.S. antitrust law and its applicability to extraterritorial cases, remarking on the Executive department's policy with regard to its dealings with OPEC, and discussing case history involving private lawsuits that allege anticompetitive conduct by OPEC.

In the third part, the author presents a series of legislative attempts - including the NOPEC bill - to extend the reach of U.S. antitrust laws to OPEC's

conduct. In the fourth part the likely judicial responses to NOPEC will be analyzed - focused especially on the Supreme Court's probable interpretation - by determining whether NOPEC permits a plaintiff to state a claim upon which relief may be granted and, if so, whether a case brought under NOPEC presents political questions that render the claim nonjusticiable by the court.

Finally, in the fifth part, the author concludes that the Supreme Court will narrowly interpret NOPEC such that, as things currently stand, no claim can be pleaded against OPEC or its affiliates, and, even if a claim could be pleaded, the case would be barred by the political question doctrine. In other words, I will show that NOPEC's ability to deliver on its promises has been vastly oversold.

[« Full article here](#)

## **The U.S. Petroleum Price Manipulation Rules: Cause for Concern?**

*Timothy J. Cornell,  
Clifford Chance*

### **Abstract**

The U.S. Federal Trade Commission ("FTC") has adopted new rules regarding market manipulation in the petroleum marketplace ("Petroleum Market Manipulation Rule"). The rules are unlikely to require significant changes in conduct for U.S. petroleum industry players, but market participants should be aware that private plaintiff lawsuits occasioned by the rule are likely to change the risk profile of the industry.

The FTC has spent decades examining the petroleum industry. Perhaps no other U.S. federal agency is more qualified to opine on the state of competition in that industry. And the FTC has consistently concluded that prices in the petroleum industry are effected primarily by supply and demand conditions and not by market manipulations. This conclusion is hardly surprising given the market dynamics of the industry.

The U.S. petroleum marketplace is supplied by numerous global players. Market concentration is low. Further, the marketplace lacks predictability, a facilitating factor for manipulation. International forces such as war, natural disaster, and changes in regional economies effect supply and demand in ways that are difficult to predict. In addition, petroleum is not a perishable commodity, allowing suppliers at all levels of the distribution chain to mitigate demand swings with reserves.

Despite scant evidence of widespread market manipulation and marketplace dynamics that make significant manipulation difficult, the U.S. Congress, facing an outcry from their constituents over rising gasoline prices at the pump, pressed the FTC for a rule to address petroleum market manipulations and the FTC provided one.

Whether the FTC will actively enforce the rule is yet to be seen - and it is likely too early to tell. Other

federal agencies have aggressively enforced similar rules in related marketplaces, but the petroleum marketplace is different. Thus, the FTC's level of intervention is difficult to predict. But whether the FTC pursues an aggressive enforcement campaign or not, private plaintiffs are likely to use the new rule as a springboard for U.S. lawsuits. And these private plaintiff lawsuits, if successful, could materially alter the risk profile of the industry.

[« Full article here](#)

## The More Things Change, The More they Stay the Same? Merger Review, the Canadian Oil and Gas Industry and the Year of Change

*Adam S. Goodman,  
Chris Pigott,  
Heenan Blaikie*

Article will be added shortly.

## Impact of Recent U.S. Competition Law Decisions on the Conduct of International Business Operations in the Energy Sector

*Darryl Anderson,  
J. Benjamin Mitchell,  
Fulbright & Jaworski L.L.P*

### Introduction

After a period of relative dormancy, the past decade was notable, from a competition law perspective, for a flurry of activity in the highest court of the United States interpreting the scope of the U.S. antitrust laws. These decisions occurred in a wide variety of contexts and industries, but the consistent theme was a tightening of the standards that private plaintiffs must meet when bringing competition claims in U.S. courts. The decisions erected higher procedural barriers to asserting such claims,[1] and they held plaintiffs to stricter substantive requirements as well.[2]

All of these decisions have important implications for energy companies doing business in the U.S., or doing business that affects U.S. commerce in some way. We highlight below two of these decisions that most directly affect international energy industry participants.

In the first, *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*,[3] the Supreme Court rejected an attempt to extend the application of United States antitrust laws to non-U.S. business activities.

The second, *Texaco, Inc. v. Dagher*,[4] rejected a claim that the pricing decisions of a legitimate joint venture should be treated as a "per se" violation of U.S. antitrust law as a price-fixing agreement among competitors, such that the decisions are condemned as illegal without any consideration of whether any harm to competition that results is outweighed by pro-competitive benefits.

With these decisions, the Supreme Court has granted greater flexibility for participants in the energy industry to structure and conduct their business arrangements as they see fit. But both decisions also offer guidance on what the limits of that flexibility are under current U.S. law. [5]

### Footnotes

[1] See, e.g., *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) (claims alleged must allege facts that support plausible antitrust violation or else they will be dismissed). Other cases are quasi-procedural in nature, interpreting the scope of U.S. competition law. See, e.g., *Credit Suisse Sec. (USA) LLC v. Billing*, 551 U.S. 264 (2007) (antitrust claims precluded by securities laws); *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004) (establishing limits on reach of U.S. competition laws to non-U.S. commerce).

[2] See e.g., *Pac. Bell Tele. Co. v. LinkLine Commc'n's Inc.*, 129 S. Ct. 1109 (2009) (rejecting price squeeze claim); *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312 (2007) (holding predatory bidding claims subject to same test as predatory pricing claims); *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007) (rejecting application of per se rule to vertical minimum resale price agreements); *Ill. Tool Works Inc. v. Independent Ink, Inc.*, 547 U.S. 28 (2006) (patent did not presumptively establish market power for tying claim); *Texaco Inc. v. Dagher*, 547 U.S. 1 (2006) (rejecting application of per se rule to joint venture pricing decisions); *Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc.*, 546 U.S. 164 (2006) (limiting scope of Robinson-Patman Act); *Verizon Commc'n's Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004) (rejecting refusal to deal claim against alleged monopolist).

[3] 542 U.S. 155 (2004).

[4] 547 U.S. 1 (2006).

[5] The reader should also be aware that, even as the Supreme Court has been increasing the latitude businesses enjoy under U.S. antitrust law, other branches of the U.S. government have recently expressed an interest in stricter enforcement of competition requirements. The U.S. Department of Justice, for instance, appears to be moving toward more active review of competition issues. See Christine Varney, "Vigorous Antitrust Enforcement in this Challenging Era," available at [www.justice.gov/atr/public/speeches/245777.htm](http://www.justice.gov/atr/public/speeches/245777.htm). Furthermore, federal enforcement agencies have asserted authority over so-called manipulation of markets, and have enacted anti-manipulation rules. See, e.g., 16 C.F.R. pt. 317 (Federal Trade Commission rules); 18 C.F.R. pt. 1C (Federal Energy Regulatory Commission rules); 7 U.S.C. §§ 9, 13(a)(2) (Commodities Futures Trading Commission authority).

[« Full article here](#)

---

## Third-party Access Rights in the Energy Sector: A Competition Law Perspective

*Aleksander Kotlowski,  
Faculty of Law, University of Oxford*

### Abstract

The article identifies circumstances in which refusal to grant third-party access to energy networks to competitors constitutes an abuse of a dominant position enjoyed by energy utilities. It explores the scope and evident limitations of Article 82 of the EC Treaty in regard to gas and electricity markets in the context of the essential facilities doctrine and refusal to supply cases. It is argued that under certain limited circumstances competition law grants compulsory third-party access. Therefore, even without further sector specific regulation and ownership unbundling, independent energy suppliers can have a legally enforceable right to access energy network facilities owned by dominant energy system operators.

*Previously published in Utilities Law Review.  
Copyright Lawtext Publishing Limited,  
www.lawtext.com, 2006. Republished with kind permission.*

 [Full article here](#)

## Interconnection Investment under the Competitive Electricity Market: The Case of Japan

*Professor Isamu Matsukawa,  
Faculty of Economics, Musashi University*

### Summary

This paper briefly examines some antitrust issues of electricity interconnection investment in the Japanese power market where 10 vertically integrated, privately owned utilities now compete with nonutilities for supply to large customers in any region, focusing on high-voltage transmission lines that connect different regions. Interconnectors, which have contributed much to the reliable supply of electricity in Japan, are now expected to promote competition in the liberalized electricity market by mitigating congestion in transmission networks. The paper discusses economic impacts on interconnection investment of such regulatory options as ownership unbundling of vertically integrated utilities, merchant transmission investment, and allocation of network access based on transmission rights.

 [Full article here](#)

---

**Subscriptions** For subscription info (fees, single and multi user licences) visit [our website](#). **Copyright & Disclaimer** © Copyright OGEL 2010. Please visit our website at [www.ogel.org](http://www.ogel.org) for our terms & conditions notice.

## About OGEL (ISSN 1875-418X)

**Oil, Gas, Energy Law Intelligence** (OGEL, ISSN 1875-418X) started publishing in January 2003 and has since gained popularity with a large number of (international) energy companies, governmental organisations, law firms (mainly those with a claim to special competence in international oil, gas and energy regulation), international agencies, academic and think-tank institutions in the field of energy policy and various NGOs. Visit [www.ogel.org](http://www.ogel.org) for more information about the journal, contributing authors and readership.

### Open to all to read and to contribute

OGEL has become the hub of a global professional and academic network. We therefore invite all those with an oil-gas-energy law and regulation interest to contribute. In addition to full length articles, we are looking for short comments on recent developments of broad interest. We would like where possible such comments to be backed-up by provision of in-depth notes and articles and primary legal and regulatory materials. Please contact us if you want to participate in this global network: we are ready to publish contributions with name, photo, and brief biographical description - but we will also accept anonymous ones.

### OGEL Legal & Regulatory Materials

A subscription to OGEL includes access to a database of Legal and Regulatory Materials, a growing collection of laws, regulations, contracts, guidelines, tribunal/court awards. The database already contains a large collection of energy laws, treaties, agreements, awards and other primary materials. As it continues to grow, it will become a more valuable asset of your OGEL subscription.

### OGELFORUM

The OGELFORUM mailinglist (listserv) started in August 2008 as a place for discussion, sharing of insights and intelligence, of relevant issues related in a significant way to oil, gas and energy issues: Policy, legislation, contracting, security strategy, climate change related to energy.

### OGEL Special features

Note that OGEL offers professional firms the opportunity of lead editing and co-sponsoring special issues on particular topics relevant to the relevant communities suitable for highlighting the professional competencies and profile of the firm, the special issue editor and contributors.

More information about these specials can be found at <http://www.ogel.org/specialfeatures.asp>

### 2010

- OGEL 1 (2010) - Antitrust in the Energy Sector

### 2009

- OGEL 3 (2009) - Student papers
- OGEL 2 (2009) - EU - Russia relations
- OGEL 1 (2009) - Middle East With a Focus on Buy Back Contracts

### 2008

- OGEL 3 (2008) - Eurasian Energy
- OGEL 2 (2008) - Venezuela: The battle of Contract Sanctity vs. Resource Sovereignty
- OGEL 1 (2008) - China's Energy and Environmental Challenges

### 2007

- OGEL 4 (2007) - Energy Security
- OGEL 3 (2007) - Energy Litigation and Arbitration - Expert Perspectives
- OGEL 2 (2007) - Unitisation
- OGEL 1 (2007) - Electricity Interconnectors (2nd)

### 2006

- OGEL 4 (2006) - Pipelines
- OGEL 3 (2006) - Africa
- OGEL 2 (2006) - Electricity Interconnectors
- OGEL 1 (2006) - Liquefied Natural Gas (LNG)

### 2005

- OGEL 4 (2005) - Asian Energy Law and Policy
- OGEL 3 (2005) - Coal
- OGEL 2 (2005) - Windpower
- OGEL 1 (2005) - Production-Sharing Contracts

### 2004

- OGEL 5 (2004) - The Energy Charter Treaty
- OGEL 4 (2004) - Corporate Responsibility
- OGEL 3 (2004) - Energy, institutional reforms and development in Latin America
- OGEL 3 (2004) - Taxation
- OGEL 2 (2004) - Renewable Energy
- OGEL 1 (2004) - Climate Change

### 2003

- OGEL 5 (2003) - Corruption
- OGEL 5 (2003) - Geopolitics of Oil and Gas
- OGEL 4 (2003) - Natural Gas
- OGEL 3 (2003) - Energy and Electricity Regulation
- OGEL 2 (2003) - Dispute Management in the Oil, Gas and Energy Industries

More information about these specials can be found at <http://www.ogel.org/specialfeatures.asp>

## News related to the OGEL Special Issue - Antitrust in the Energy Sector

July 2009 - February 2010

### Eni moves to satisfy watchdog

<http://www.ft.com/cms/s/0/beb8094c-11b9-11df-9d45-00144feab49a.html>

(may require subscription)

Eni, the Italian energy group, on Thursday offered to sell some €1.5bn (\$2bn) of pipeline assets, including its majority stake in the TAG pipeline which brings Russian gas to Italy via Austria, to satisfy European antitrust regulators.



### Biskenergo Fined For Abuse Of Dominance

[http://www.fas.gov.ru/english/news/n\\_28605.shtml](http://www.fas.gov.ru/english/news/n_28605.shtml)

The Federal Antimonopoly Service issued a determination to "Biyskenergo" Ltd. to transfer more than 117 million Rubles of illegally gained income to the federal budget for price manipulation in the wholesale electric energy (power) market. On 1st December 2009, FAS Russia found that "Biyskenergo" Ltd. abused market dominance (in breach of Part 1 Article 10 of the Federal Law "On Protection of Competition"). ... "This decision is very important for developing enforcement practice of antimonopoly control over the wholesale market of electric energy and power; and it should send a signal to market participants on the need to take into account the norms and standards of the antimonopoly law and the law on electric power industry. Producers of electric energy on the wholesale market must consider this when choosing the strategy of market behaviour, first of all, filing the price bids that should meet the criteria economic and technological justification", said Vitaly Korolyov, the Head of the FAS Russia's Department for Control over the Electric Power Industry.



### Commission Approves Proposed Acquisition Of Joint Control Of MET By Normeston And MOL

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1914&format=HTML&aged=0&language=EN&guiLanguage=en>

The European Commission has cleared the proposed acquisition of joint control over MOL Energy Trade Ltd (MET) by MOL Hungarian Oil and Gas Public Limited Company and Normeston Trading Limited. MOL is an integrated oil and gas group. Normeston is active in the trading of crude oil and refined oil products. MET is currently a wholly owned subsidiary of MOL located in Hungary. After examining the

operation, the Commission concluded that the transaction would not significantly impede effective competition in the EEA or any substantial part of it. The Commission examined the vertical links between Normeston's trade in crude oil and MOL's downstream activities of refining petroleum products. The Commission's investigation found that due to Normeston's minor position in the upstream market, MOL's competitors would continue to have ample possibilities to source their feedstock from other suppliers, and that as Normeston is not active in any of the downstream markets there would be no risk of closing off customers post-transaction.



### The Court Found Invalid the Penalty of 4.2 Billion Rubles Imposed on TNK-BP by the Federal Antimonopoly Service

<http://www.tnk-bp.com/press/news/2009/12/1533/>

The Arbitration Court of the Tyumen Region rescinded the claim of the Federal Antimonopoly Service about alleged violation of the antitrust legislation by TNK-BP and cancelled the penalty of 4.2 billion rubles imposed by the Federal Antimonopoly Service on the company, Interfax's correspondent reported from the court session on Friday.



### EU watchdog pursues energy groups

Dec 4, [http://www.ft.com/cms/s/0/288663ce-e02c-11de-8494-00144feab49a.html?nclick\\_check=1](http://www.ft.com/cms/s/0/288663ce-e02c-11de-8494-00144feab49a.html?nclick_check=1)

European competition authorities on Thursday kept up their pressure on the region's big energy companies, revealing a probe involving Eon's Ruhrgas gas distributor and securing legal commitments from GDF Suez to increase competition in France's gas market.



### New Zealand: Energy companies warned over alleged anti-competitive behaviour

Release no 52, Issued 24 November 2009

<http://www.comcom.govt.nz//MediaCentre/MediaReleases/200910/energycompanieswarnedoveralleged.aspx>

The Commerce Commission has issued a formal warning to two energy companies alleged to have attempted to engage in anti-competitive conduct during the purchase by tender of a

power station near Nelson in 2002. The warning, issued to Contact Energy Limited (Contact) and TrustPower Limited (TrustPower), follows an investigation into possible bid-rigging behaviour under section 30 of the Commerce Act 1986. The Commission investigation discovered communications between Contact and TrustPower over the purchase of the Cobb hydroelectric power station, one of the electricity generation assets owned by NGC Holdings Limited. Contact approached TrustPower to consider a back to back hedge arrangement for the supply of electricity from Cobb depending on which company was successful in the auction. During initial discussions, inappropriate references appear to have been made along the lines that Contact and TrustPower not bid against each other and as a result push up the price for Cobb. Cobb was subsequently acquired by TrustPower for \$92.5 million in 2003.



#### **Sweden: Illegal purchase of biogas by Östgötatrafiken**

[http://www.kkv.se/t/NewsPage\\_5439.aspx](http://www.kkv.se/t/NewsPage_5439.aspx)

The agreement between Östgötatrafiken and Svensk Biogas i Linköping AB on the supply of biogas fuel is a goods contract that should have been subject a procurement procedure. Since no procurement procedure took place, the purchase is illegal, under decision by the Swedish Competition Authority.



#### **EC Antitrust: Commission confirms inspections in Czech electricity sector**

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/518&format=HTML&aged=0&language=EN&guiLanguage=en>

The European Commission can confirm that on 24 November 2009 Commission officials carried out unannounced inspections at the premises of the energy company CEZ, a.s. and other undertakings all located in the Czech Republic. The Commission has reason to believe that action carried out by CEZ unilaterally or together with other players may have led to a substantial distortion of competition and resulted in the enhancement of CEZ's dominant position on the Czech wholesale electricity market. The suspected illegal conduct may comprise excluding competitors and raising prices on the Czech wholesale electricity market.



#### **US Justice Department Requires Divestitures in Cameron International Corp.'s Acquisition of NATCO Group Inc.**

Nov 17, <http://www.prnewswire.com/news-releases/justice-department-requires-divestitures-in-cameron-international-corp-s-acquisition-of-natco-group-inc-70306442.html>

The Department of Justice announced today that it will require Cameron International Corp. to divest certain assets used in the production and sale of desalters for use in the oil refining industry in order to proceed with its acquisition of NATCO Group Inc., currently valued at approximately \$980 million. The Department said that the deal as originally proposed would substantially lessen competition in the manufacture of refinery desalters in the United States, resulting in higher prices and reduced quality, service and innovation. The Department said that the divestitures also remedy the harm to competition caused by Cameron's 2005 acquisition of certain assets from Howe Baker Engineers Ltd.



#### **Eni says to appeal any EU fine on TAG**

<http://www.reuters.com/article/utilitySector/idUSLD8489620091113>

Eni SpA will appeal any fine it receives over an EU antitrust probe into the TAG pipeline, which transports Russian gas through Austria to Italy, Eni's chief executive said



#### **Dawn Raids Carried Out At Electricity Wholesalers**

<http://www.internationallawoffice.com/Newsletters/detail.aspx?g=2f41475c-5b02-4f72-a279-45a7538123d7>

The Belgian Competition Authority has confirmed that dawn raids were carried out at the premises of several companies active in the wholesale of electricity in Belgium. The evidence sought relates to possible restrictive practices and/or abuse of a dominant position, with more specific potential concerns around capacity withdrawals and price formation.



**BKartA Initiates Abuse Proceedings Against Heating Electricity Suppliers**  
[http://www.bundeskartellamt.de/wEnglisch/News/press/2009\\_09\\_24.php](http://www.bundeskartellamt.de/wEnglisch/News/press/2009_09_24.php)

The Bundeskartellamt (BKartA) has initiated abuse control proceedings against suppliers of electricity used for night storage heating and electric heat pumps. Heating electricity is supplied at special tariffs and predominately at night time for use in night storage heaters and for operating heat pumps, and as such has been defined as a separate market by the BKartA. The proceedings are being conducted based on the so-called "comparative market concept" by which the prices or profits of the heating electricity suppliers are compared with those of other low-cost comparable companies.



**BKartA Prohibits Local Gas Supplier From Charging Excessive Concession Fees**  
[http://www.bundeskartellamt.de/wEnglisch/News/press/2009\\_09\\_21.php](http://www.bundeskartellamt.de/wEnglisch/News/press/2009_09_21.php)

The BKartA has prohibited GAG Gasversorgung Ahrensburg GmbH of Schleswig-Holstein from charging abusively excessive concession fees and ordered their reimbursement. Concession fees are charges levied on gas grid operators for the right to use local transport routes, the limits for which are set by the Ordinance on Concession Fees for Electricity and Gas. Different limits are set for tariff and special-contract customers, with the limit for the former many times higher than the limit for the latter.



**Commission Clears Acquisition Of Electrabel Power Plants And Drawing Rights By E.ON**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1511&format=HTML&aged=0&language=EN&guiLanguage=en>

The Commission has approved the proposed acquisition by German firm E.ON AG from Belgium-based Electrabel SA/NV, which is part of GDF Suez SA, of two power plants and drawing rights (the making available of guaranteed volumes of electricity to the right-holder) to certain electricity generation capacity in Belgium and The Netherlands. Following its investigation, the Commission concluded that horizontal overlap between the activities of E.ON and the acquired assets is limited and that the transaction would not raise competition concerns as it only leads to minor market share additions

to E.ON's current modest position on the Belgian and Dutch markets. The transaction is linked to Electrabel's acquisition from E.ON of power generation assets and drawing rights to electricity capacity in Germany which result from undertakings given by E.ON to make divestments in order to allay competition concerns in Germany, following the Commission's decision of 26 November 2008.



**Commission Approves Acquisition By RREEF Fund Of Iberdrola's Stake In BBG**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1499&format=HTML&aged=0&language=EN&guiLanguage=en>

The Commission has cleared the proposed acquisition of the shares currently owned by the Spanish energy company Iberdrola in Bahía De Bizkaia Gas S.L. (BBG), also of Spain, by UK-based RREEF Pan-European Infrastructure Fund LP. BBG runs the commercial and maintenance operations of a liquefied natural gas regasification plant situated in Bilbao, Spain, while RREEF is a private 3 10 - 16 October 2009 equity infrastructure fund for third party investors, including a number of large pension funds and insurance companies, predominantly active in real estate and infrastructure investments. The Commission approved the transaction after it found that RREEF did not carry out any activity that overlaps with or relates to the activities of the other parties to the transaction



**Commission approves proposed acquisition of joint control by CEZB and JAVYS of newly created joint venture JESS**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1672&format=HTML&aged=0&language=EN&guiLanguage=en>

Commission Approves Proposed Acquisition Of Joint Control By CEZB And JAVYS Of Newly Created Joint Venture JESS The European Commission has cleared under the EU Merger Regulation the proposed joint venture Jadrová energetická spoločnosť Slovenská, a.s. (JESS), of the Slovak Republic. The parent companies, who will have joint control of the joint venture, are CEZ Bohunice a.s. (CEZB) of the Czech Republic, and Jadrová a výradovacia spoločnosť, a. s. (JAVYS) of the Slovak Republic. CEZB belongs to the CEZ Group, which is active in the generation, distribution, sale and trading of electricity throughout the EEA, Southeastern

Europe and Turkey. JAVYS is active in the treatment and disposal of radioactive waste and spent nuclear fuel and decommissioning of nuclear facilities in the Slovak Republic.



### **Commission Market Tests Proposed Commitments By EDF To Increase Competition In The French Electricity Retail Market**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1669&type=HTML&aged=0&language=EN&guiLanguage=en>

The European Commission is inviting comments from interested parties on commitments offered by the French energy company EDF which seek to address the Commission's concerns that EDF may be abusing its dominant position in France and therefore infringing Article 82 of the EC Treaty. The Commission is concerned that EDF may hinder through its contracting practices the entry and expansion of competitors on the market for retail supplies of electricity to large industrial users. EDF's contracts also contain provisions which may constitute illegal resale restrictions.



### **Commission Fines Transformer Cartel EUR 67.6m**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1432&format=HTML&aged=0&language=EN&guiLanguage=en>

The Commission has imposed fines totalling EUR67.6m on seven companies – namely, ABB, AREVA T&D, ALSTOM, Fuji Electrics, Hitachi and Toshiba – for participating in a power transformer cartel between 1999 and 2003. Power transformers are major electrical components that reduce or increase the voltage in an electrical circuit. The Commission found that the Japanese and European transformer manufacturers operated an oral market sharing agreement, referred to as a "Gentlemen's Agreement", where they agreed that the Japanese members would not sell power transformers in Europe and that the European members would not sell power transformers in Japan.



### **Commission Clears Acquisition Of Pražská Teplárenská By**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1433&format=HTML&aged=0&language=EN&guiLanguage=en>

International Power Opatovice., EnBW And The City Of Prague The European Commission has cleared the proposed acquisition of Pražská teplárenská, a.s (PT) of the Czech Republic by International Power Opatovice, a.s., also of the Czech Republic, German company EnBW AG, and the City of Prague. PT is primarily involved in the provision of district heat, but is also active in generation and wholesale supply of electricity, the provision of ancillary services, and the maintenance and repair of technology equipment in the energy sector.



### **Commission Market Tests Svenska Kraftnät Commitments On Swedish Electricity Transmission Market**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1425&format=HTML&aged=0&language=EN&guiLanguage=en>

The Commission has invited comments from interested parties on the commitments offered by Svenska Kraftnät (SvK), the Swedish transmission system operator, to alleviate the Commission's concerns that SvK may be abusing a dominant position on the market by limiting the amount of export transmission capacity available on electricity interconnectors situated along Sweden's borders, with the objective of relieving internal congestion on its network. The Commission expressed concerns that this may favour consumers in Sweden over consumers in neighbouring countries by reserving domestically produced electricity for domestic consumption.



### **CFI Upholds Fines Imposed On Akzo Nobel, Elf Aquitaine And Arkema**

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-10/cp090079en.pdf>

The Court of First Instance (CFI) has upheld the fines imposed by the European Commission on 19 January 2005 on Akzo Nobel NV and its Dutch and Swedish subsidiaries; and Elf Aquitaine SA and its subsidiary Arkema SA. The fines were imposed on the companies for participating in a cartel on the monochloroacetic acid market between 1984 and 1999. The Akzo Group was fined EUR84.3m, while Elf Aquitaine and Arkema were ordered jointly and severally

to pay the EUR45m. Arkema was also ordered jointly to pay EUR45m. The CFI reduced the fine imposed on Hoechst AG by ten per cent to EUR66.63m after finding that the Commission failed to take into account under its Leniency Notice that Hoechst did not dispute the facts on which the Commission based its accusations.



**The Court confirmed: Chelyabinsk OFAS Russia justly fined Lukoil-Uralnefteproduct Ltd.**

[http://www.fas.gov.ru/english/news/n\\_27318.shtml](http://www.fas.gov.ru/english/news/n_27318.shtml)

On 20th October 2009, the Chelyabinsk Regional Arbitration Court supported the position of the Chelyabinsk Office of the Federal Antimonopoly Service (OFAS Russia) that fined "Lukoil-Uralnefteproduct" Ltd. for violating the antimonopoly legislation. Earlier the Antimonopoly Service found that "Lukoil-Uralnefteproduct" Ltd. and an individual entrepreneur Kazykhanova were engaged in concerted actions aimed at maintaining prices for petrol and diesel fuel.

see also: "Antitrust Watchdog Fines Rosneft \$180M"  
<http://www.themoscowtimes.com/business/article/antitrust-watchdog-fines-rosneft-180m/388314.html>



**Bundeskartellamt examines district heating sector**

[http://www.bundeskartellamt.de/wEnglisch/News/press/2009\\_09\\_14.php](http://www.bundeskartellamt.de/wEnglisch/News/press/2009_09_14.php)

The Bundeskartellamt has launched a sector inquiry into the district heating sector in Germany and within the past few days has sent decisions requesting extensive information to 30 district heating suppliers. Around 5 million households in Germany are supplied with district heating. Proportional to the various forms of heating provided, district heating ranks third place (13 %) behind natural gas (approx. 48%) and heating oil (approx. 30%). The annual household consumption of district heating, weather depending, amounts to around 80 billion kilowatt hours.



**Mergers: Commission approves proposed acquisition of KOM-STROM by DONG**

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1322&format=HTML&aged=0&language=EN&guiLanguage=en>

The European Commission has cleared under the EU Merger Regulation the proposed acquisition of KOM-STROM AG of Germany by a wholly-owned subsidiary of DONG Energy A/S of Denmark. Both companies are involved, inter alia, in the supply of electricity and natural gas in Germany. After examining the operation, the Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it.



**BWB Takes LNG Suppliers To Court For Abuse Of Collective Dominance**

<http://www.bwb.gv.at/BWB/fluessiggas.htm>

The Austrian Competition Authority, BWB, has filed a request that the Vienna Cartel Court order the incumbent Austrian LNG suppliers to cease an alleged violation of section 5 of the Austrian competition act (Kartellgesetz) and Article 82 of the EC Treaty. The BWB objects to contracts that compel customers to procure LNG only from the supplier that has also provided the tank.



**Bureau Approves Deal To Inject More Competition Into Gas Market**

<http://www.competitionbureau.gc.ca/eic/site/cbbc.nsf/eng/03115.html>

The Competition Bureau has approved a deal that it believes will address competition concerns in the Southern Ontario Gas Market. The deal approved will see Ultramar Ltd. acquire terminal storage and distribution capacity from Suncor Energy Inc. as part of a remedy to address competition concerns raised by the Bureau over the merger of Suncor and Petro-Canada. Ultramar will acquire the capacity under the terms of a consent agreement between the Bureau and Suncor and Petro-Canada signed in July 2009. The Bureau required Suncor to supply 1.1 billion litres of terminal and distribution capacity for refined petroleum products in the Greater Toronto Area for a period of 10 years. Suncor has now entered into terminalling agreements with Ultramar for all of that capacity for the full 10-year period.

**Mergers: Commission approves proposed acquisition of Venture by Centrica**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1246&format=HTML&aged=0&language=EN&guiLanguage=en>

The European Commission has cleared under the EU Merger Regulation the proposed acquisition of Venture Production plc of the UK by Centrica plc, also of the UK. Both companies are involved, inter alia, in the exploration and production of natural gas in the North Sea. After examining the operation, the Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it.



**Competition Bureau Acts to Preserve Competition in Suncor / Petro-Canada Merger**  
<http://www.competitionbureau.gc.ca/eic/site/cbc.nsf/eng/03103.html>

OTTAWA, July 21, 2009 — The Competition Bureau announced today that it has reached a consent agreement with Suncor Energy Inc. and Petro-Canada, requiring them to divest 104 retail gas stations in southern Ontario and to sell storage and distribution network capacity in the Greater Toronto Area for 10 years.



**Spain: CNC Investigates GALP**  
<http://www.cnccompetencia.es/Inicio/Noticias/tabcid/105/Default.aspx?Contentid=255415&Pag=1>

The Comisión Nacional de la Competencia (CNC) has opened an investigation against GALP ENERGIA. The firm is accused by the CNC of having reached a non-compete agreements with several petrol stations, which included excessively long contracts and other unlawful conditions. GALP is one of Portugal's leading integrated oil and natural gas groups. The investigation follows a complaint filed by the Spanish Confederation of Petrol Stations (CEEES).

See also CEEES  
[http://www.mundopetroleo.com/asociaciones/cees/zona\\_noticias.asp?cod=255&noti=4626](http://www.mundopetroleo.com/asociaciones/cees/zona_noticias.asp?cod=255&noti=4626)



**Gazprom Neft hit with antitrust verdict**  
[http://www.upi.com/Energy\\_Resources/2009/07/10/Gazprom-Neft-hit-with-antitrust-verdict/UPI-8311247247514/](http://www.upi.com/Energy_Resources/2009/07/10/Gazprom-Neft-hit-with-antitrust-verdict/UPI-8311247247514/)

MOSCOW, July 10 (UPI) -- Russian market regulators found Gazprom Neft, the oil arm of energy giant Gazprom, violated antitrust laws by abusing its dominant market position. Russian President Dmitry Medvedev ordered the Federal Antimonopoly Service to conduct a probe in 2008 in an effort to find explanations for continued increases in jet-fuel prices and passenger fares.



**Antitrust: Commission fines E.ON and GDF Suez €553 million each for market-sharing in French and German gas markets**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1099&format=HTML&aged=0&language=EN&guiLanguage=en>

The European Commission has imposed fines totalling €1 106 000 000 on E.ON AG and its subsidiary E.ON Ruhrgas AG (of Germany) and on GDF Suez SA (of France) for market sharing in breach of EC Treaty rules on cartels and restrictive business practices (Article 81). E.ON/E.ON Ruhrgas and GDF Suez are fined €553 000 000 each. Ruhrgas AG (now E.ON Ruhrgas, part of the E.ON group) and Gaz de France (now part of GDF Suez) agreed in 1975, when they decided to jointly build the MEGAL pipeline across Germany to import Russian gas into Germany and France, not to sell gas transported over this pipeline in each other's home markets. They maintained the market-sharing agreement after European gas markets were liberalised, and only abandoned it definitely in 2005. These are the first Commission fines imposed for an antitrust infringement in the energy sector. This case is entirely separate from the antitrust case in which GDF Suez recently submitted commitments (see IP/09/1097).



**Antitrust: Commission market tests commitments by GDF Suez to boost competition in French gas market**  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1097&format=HTML&aged=0&language=EN&guiLanguage=fr>

The European Commission is inviting comments from interested parties on commitments offered by the French energy company GDF Suez to remedy concerns that it might have infringed EC Treaty rules on abuse of a dominant market position (Article 82) in the gas sector. The Commission was concerned in particular that GDF Suez might be closing off competitors from access to gas import capacity into France. Whilst not acknowledging any infringement, GDF Suez proposed to address the Commission's concerns through a major structural reduction in its long-term reservations of gas import capacity into France. The Commission has reviewed the commitments in close cooperation with the French energy regulator. The Commission invites interested parties to present their comments on the commitments offered by GDF Suez within two months of the publication in the EU Official Journal (on 9 th July). Should the market test indicate that GDF Suez's proposals remedy the Commission's competition concerns, the Commission may adopt a decision under Article 9 of Regulation 1/2003 making the commitments legally binding on GDF Suez.