Working Party No. 2 on Competition and Regulation

OECD RECOMMENDATION CONCERNING STRUCTURAL SEPARATION IN REGULATED INDUSTRIES

-- Presentation by Céline Gauer --

14 June 2010

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

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

14 June - Paris

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

Vertical integration in the gas sector

- Common feature in the gas industry
- At the root of foreclosure in downstream supply markets
- Regulatory solution: the third energy package?
- Competition enforcement: two examples of structural remedies
Slide 3

**Access to gas network**

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

Slide 4

**Various forms of refusals to deal**

Two competition cases in the gas sector: RWE and ENI

- Capacity hoarding
- Inadequate capacity management
- Capacity degradation
- Margin squeeze
- Strategic limitation of investments
Slide 5

Structural remedies in EU competition law

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

Slide 6

Inefficiency of Behavioural remedies

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

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

Lessons learnt

• Regulation is necessary but not sufficient
• Vertical integration creates an incentive to abuse
• Remedies to infringements deriving from the structure of the undertaking require ownership unbundling
Thank you for your attention