

Sector Workshop on Competition Rules in the Energy Sector



In March 2018, the OECD/KPC annual sector workshop took place in Jeju, Korea. This year's event was devoted to the application of competition policy and rules to a very important sector in most societies: the energy sector. This is an industry where the role of competition authorities in many jurisdictions has increased in the last few years as liberalization has taken off throughout the world.

The event focused mostly on enforcement actions but also undertook a wider view, examining the intersection between competition policy and the role of regulations, very important in this market to ensure security of supply, for instance. One of the initial sessions focused on the specific characteristics of the market and

its economic functioning, which needs to be clearly understood in order for a competition authority to consider intervening. Specific focus was devoted to the energy sector and its dynamics in Asia, and more specifically to electricity and gas.

For this workshop a wide array of experienced speakers with extensive experience in the sector were made available by the authorities of Korea (KFTC), EU Commission and the CADE (Brazil) as well as from the OECD.

The event started with an examination by Mr. Ruben Maximiano of the OECD of main features of the energy sector and of the main competition issues found across jurisdictions, in particular in the



context of ongoing or recently undertaken liberalization processes. This was followed by a session on market definition, in a session presented by Mr. Ruben Maximiano, that by examining a number of cases in a number of different jurisdictions identified some common threads and principles that underwrite the identification of relevant markets in the electricity and gas sectors. The remaining sessions all dealt with anti-competitive agreements.

First up was Mr. Alexander Gee, Deputy Head of Unit at DG Competition of the European Commission, that shared the experience of the European Union in two sessions dedicated to abuse of dominance in the sector. After offering the context of the liberalization process in Europe, a number of cases undertaken by the Commission were explored, in many instances to prevent that the incumbent companies impeded or made less successful the liberalization process. Cases of exclusionary nature (exclusive dealing, refusals to deal), exploitative nature (such as market manipulation, discrimination, and market partitioning), were examined in detail. Mr. Hung-chu Wang of Chinese Taipei then shared a case on Liquified Petroleum Gas market in Kinmin region. The day finished with a hypothetical case dealing with market

definition in the natural gas import markets. The plenary was divided into two smaller groups to discuss and deal with the case, make preliminary findings and make proposals for future action and investigation.

The second day was dedicated to merger control and anti-competitive agreements. Mr. Paulo Burnier, Commissioner of CADE, presented first on the Brazilian experience in mergers in the sector sharing experience with three recent complex cases: Alesat/Ipiranga (a prohibition of a transaction in the Distribution of automotive fuel market, on the basis of coordinated effects), Ultragaz/Liquigás (LPG markets with high concentration in some regions, with one of the merging parties being an SOE), Gemini (a JV in natural gas sector). Dongyeon Kim, Deputy Director, International Cartel Division of the KFTC then shared the Korean experience with three cases also: two price fixing cases (one by 6 LPG suppliers and another case involving 3 refiners) and one bid rigging case involving the construction of LNG storage tanks. Brazil's Paulo Burnier then also shared the experience of CADE with cartels and bid rigging, involving nuclear power, hydro power, solar panels and gas retail.





The third day started with the second hypothetical session, building on the case already started and discussed on day one, but this time the same groups focusing on the alleged anti-competitive behavior that would configure a possible abuse of dominance case involving the incumbent operator facing a market being liberalized. The EU then shared the experience with anti-competitive agreements, and interestingly with a case involving the granting of exclusive and special rights, showing that under the EU laws an infringement may be established where the State measures at issue affect the structure of the market by creating unequal conditions of competition between companies, by allowing the public undertaking or the undertaking which was granted special or exclusive rights to maintain (for example by hindering new entrants to the market), strengthen or extend its dominant position over another market, thereby restricting competition, without it being necessary to prove the existence of actual abuse. The final part of the workshop dealt with the relationship between competition authorities and energy regulators and with advocacy efforts. Regarding the first session, it was shared between Ruben Maximiano from the OECD providing an overall view of the main

issues that competition authorities might wish to engage with energy regulators, and then Paulo Burnier provided examples from Brazil in the sector with MOUs with the relevant regulators, and how these relationships have evolved and developed over time.

The workshop's final session made the case for the importance of the role that competition advocacy by the competition authority can play in the design of regulation and was led by Mr. Takehiro Suzuki, deputy director of the Coordination Division of the JFTC. He shared the experience in Japan of developing guidelines in the sector and of issuing policy recommendations in the context of a liberalization process.



This was an event that allowed participants to explore in depth a sector that has many specificities can be a rather complex one for newer agencies in particular, but that draws attention given how fundamental energy is for modern well functioning societies and economies. Drawing upon some very experienced speakers it was possible to show that, where relevant, this is a sector where competition authorities may intervene effectively.