Competition on European energy markets – the view from Brussels

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Overview

A. **Problems** in the European energy sector

- Energy Sector Inquiry/Electricity Study
- Internal market review

B. Remedies through the **3rd liberalization package** and

C. Commission **competition cases** in the energy sector

A

The Sector Inquiry and electricity study uncovered many problems in the EU energy sector

Key findings

1 Market concentration/market power

2 Vertical foreclosure: inadequate unbundling of supply and network

3 Lack of market integration: lack of regulatory oversight on cross border issues

4 Lack of transparency

5 Distrust in price formation

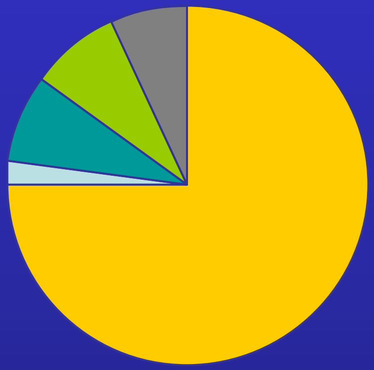
6 Inadequate balancing regimes

7 Little competition on downstream markets

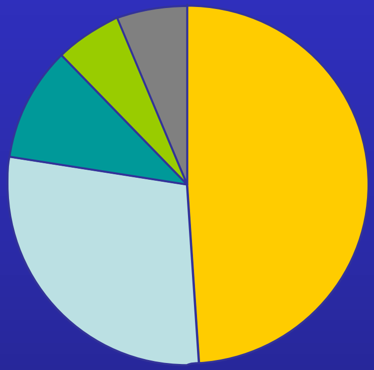
A1

Concentration in generation is abound in the electricity sector...

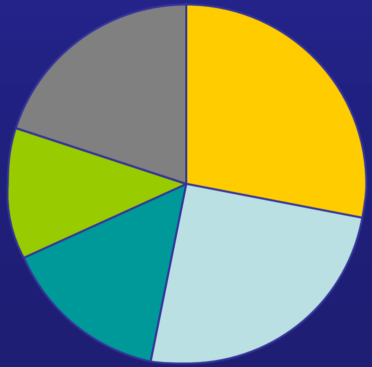
FRANCE - single dominance



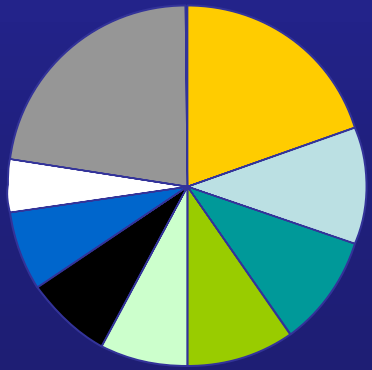
SPAIN - duopoly



GERMANY - oligopoly



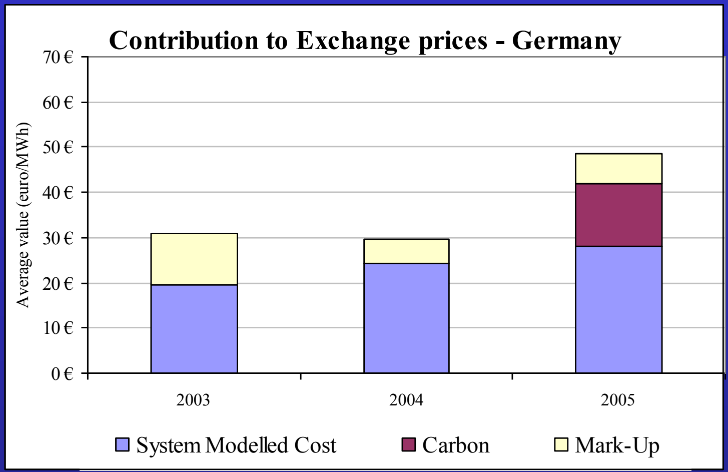
UK – fairly competitive market

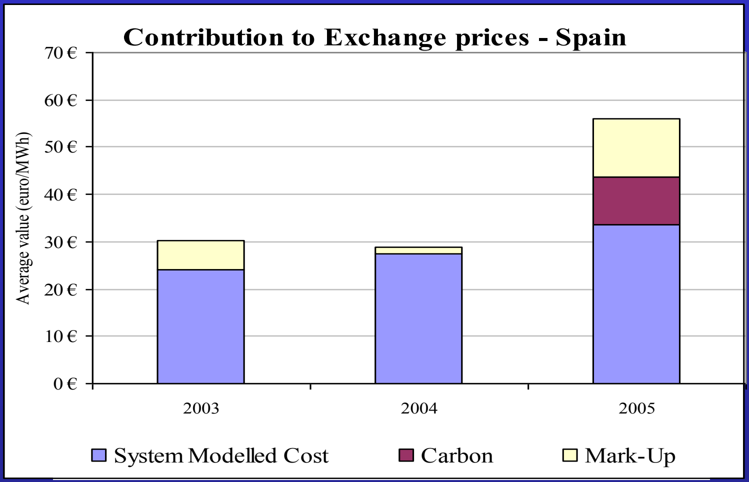


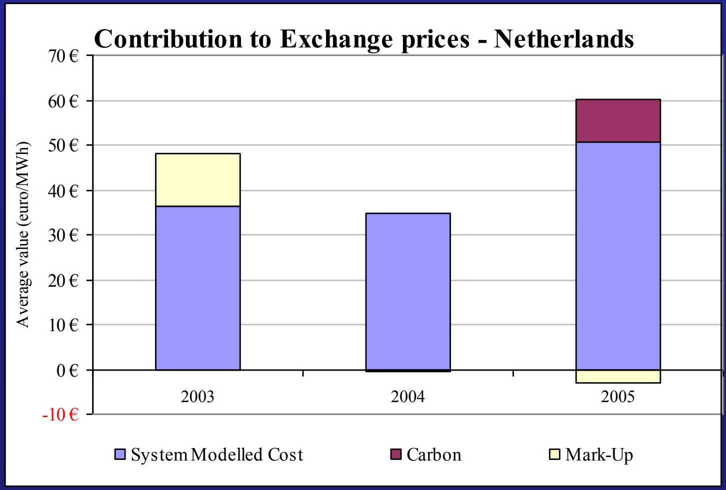
A1

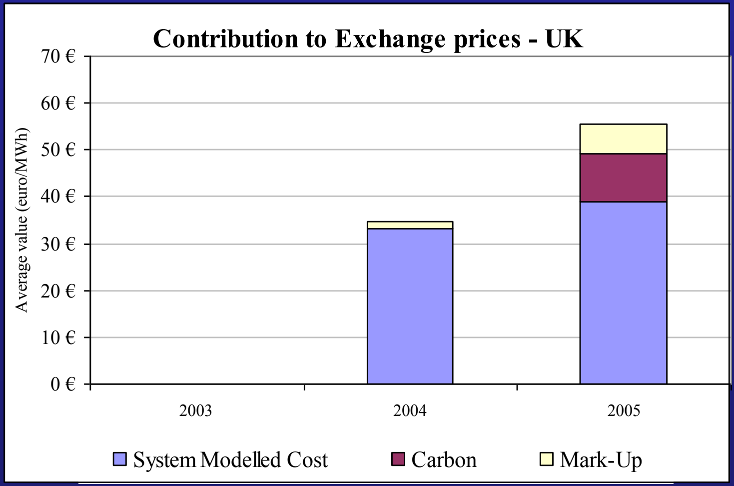
...leading to higher mark-ups possibly also via capacity withdrawal

Key results of the electricity study





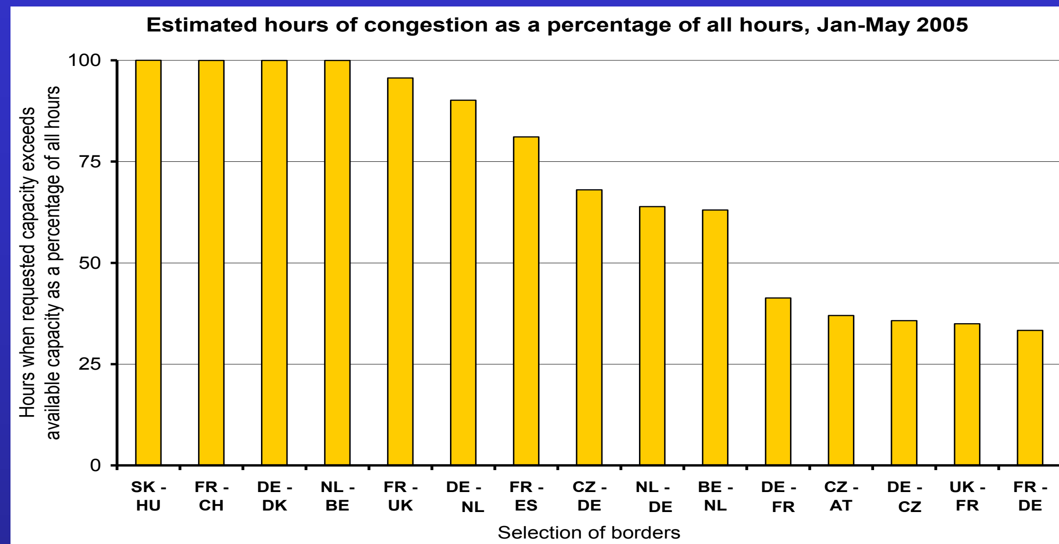




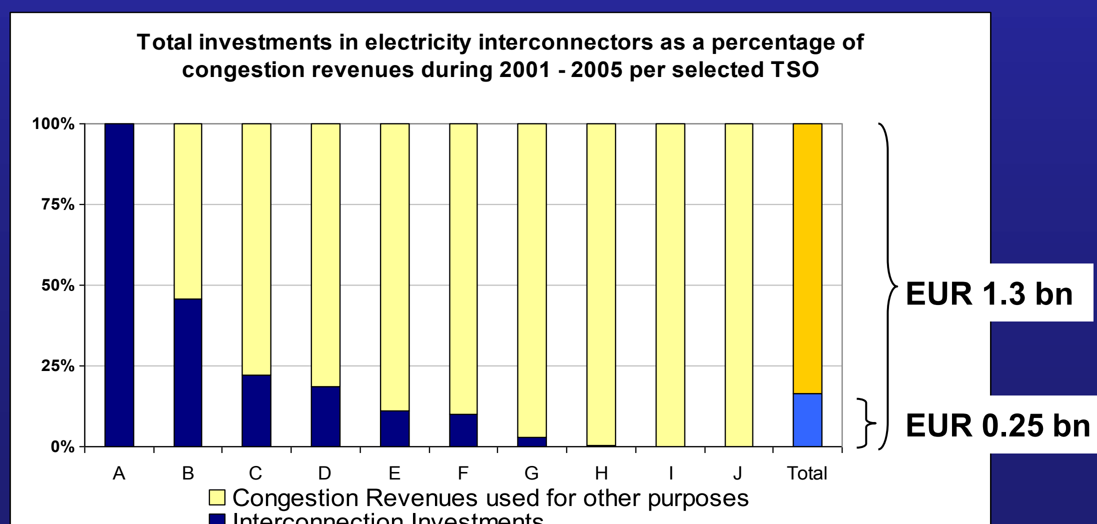
A2

Inadequate unbundling leads to vertical foreclosure and lack of investments

Interconnector congestion



Use of congestion revenues (AT, CS, DE, ES, IT, NL, FR, PL, SL, UK)



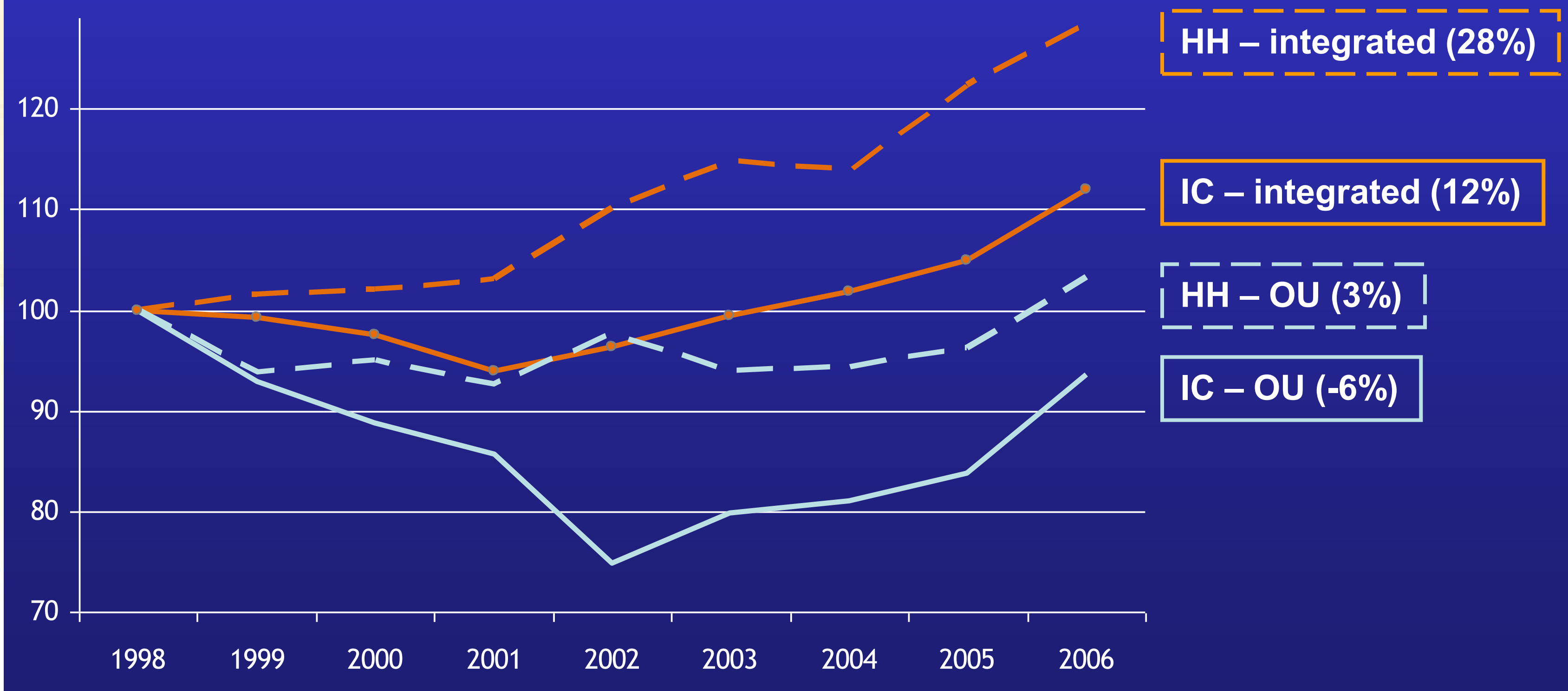
A2

Electricity prices developed more favourably in Member States with ownership unbundling

Development of electricity prices in MSs with and without ownership unbundling

Electricity household and industrial price development, 1998-2006 (1998=100) – net of taxes

Cumulated price growth (1998-2006)

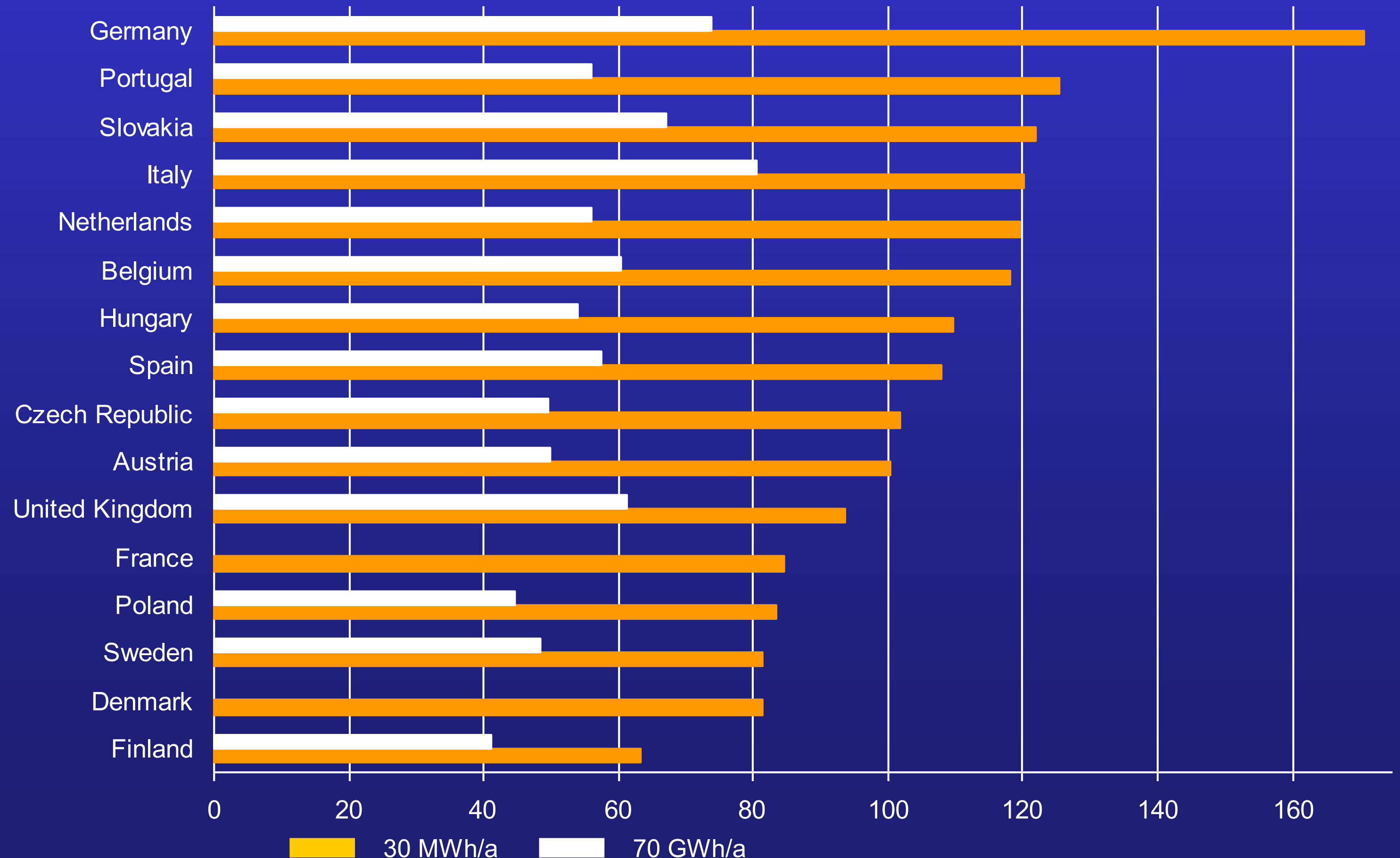


Source: Eurostat, calculations

A3

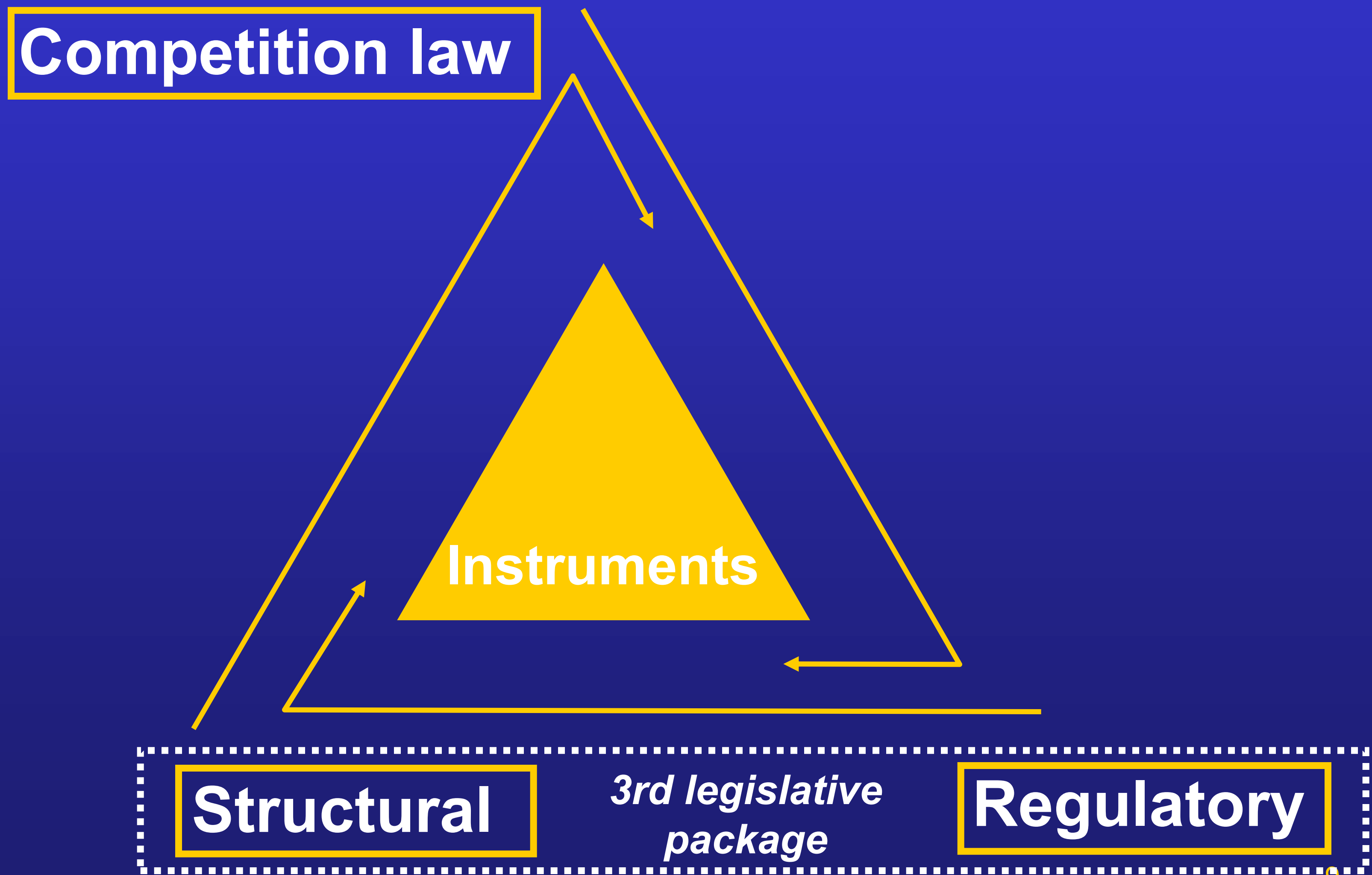
Lack of market integration results in significant price differences in electricity

Average retail prices (EUR/MWh) – small (30 MWh/a) and large (70 GWh/a) industrial customers, 2005-2007



Source: Eurostat

The sector inquiry and internal market review foresee 3 categories of remedies



B

The legislative proposals adopted last week are the result of a 2-year review process

June 2005	January 2007	March 2007	July 2007	19 September 2007
– Launch of the Energy Sector Inquiry	– Adoption of Commission „Energy Policy for Europe“ – Adoption of the Final Report of the Sector Inquiry	– European Council and Energy Council endorsing Commission's new energy strategy	– Adoption by European Parliament of Resolution on EU internal energy markets	– Commission proposals put forward for 3rd legislative package on EU internal energy market

Objectives

- An integrated market – as far as possible using the cheapest resources
- Networks developed and operated to serve the interests of European consumers
- Strong and efficient European energy companies
- Achieving simultaneously competition, security of supply, and sustainability

B

The proposals of 19 September aim towards the completion of the internal energy market

Key proposals

1. Effective separation of production and supply from networks
2. Enhanced powers and independence of Regulators
3. New mechanism for regulatory cooperation (ACER)
4. Efficient cooperation between TSOs (ENTSO)
5. Improving market functioning
6. Cooperation to reinforce SOS

B1

Effective unbundling is necessary to create a level playing field between market players

Effective unbundling on EU level for gas and electricity (only transmission)

- **Preferred** option: **ownership unbundling**
  - Same persons cannot control supply/production undertaking while also holding interest or exercising right in TSO (non-controlling/blocking minority right for both: OK)
  - Same principles for publicly as for privately held companies
  - Temporary derogation on OU for new infrastructure
- **Derogation**: **ISO**
  - Network managed by separate entity
  - Certification and designation procedure – Commission approval needed
  - Same guarantees on independence and investment incentives required as with OU
- **Third country** aspects
  - Companies from third countries have to comply with same OU requirements
  - Third country entities can only acquire control over TSO in EU if permitted by agreement between EU and respective country

B2

Regulatory powers to be strengthened and harmonized across the EU

Regulatory powers

- Aim to achieve **uniformity in status** and **powers** of national regulators
  - Legally distinct and functionally, financially independent
  - Single regulator
- **Strengthening** of market regulation powers
  - Monitoring compliance with TPA rules, unbundling obligations, balancing mechanisms, congestion and interconnection management
  - Reviewing investment plans of TSOs; monitoring network security and reliability
  - Monitoring transparency obligations
  - Monitoring level of market opening ad competition
  - Ensuring consumer protection measures are effective
- Clear **mandate to cooperate** at EU level (also with ACER and Commission)

B3

ACER broadens regulators' competences and decision power compared to ERGEG

Agency for the Cooperation of Energy Regulators

- Key **roles**
  - Providing framework for national regulators to cooperate (procedures for exchange of information and apportionment of competences, promotion of regional cooperation)
  - Regulatory oversight of the cooperation between TSOs (monitor and review activities of ENTSO E&G such as 10+ year investment plan and preparation of technical and market codes)
  - Individual decision powers (exemption requests and regulatory regimes across MSs and other technical issues tbd.)
  - General advisory role towards Commission and power to adopt non-binding guidelines
- **Governance** model and key parameters
  - Administrative Board (administrative and budgetary matters), Board of Regulators (regulatory matters and decisions)
  - Staff of 40-50; budget of EUR 6-7 m

B4

ENTSO will be the basis for enhanced cooperation amongst TSOs in both sectors

European Network of TSOs for electricity and gas

- Key roles
  - Developing market and technical codes
  - Research and innovation activities of common interest (SOS, energy efficiency, low carbon technologies)
  - Coordination of grid operation (both EU and regional level)
  - Investment planning (focus on 10+ year plan)
- Formal designation of entities by Commission and monitoring by ACER

B5

The proposals also address individual issues where deficiencies were identified

Improving market functioning (1)

- **Exemption** regime
  - Guidelines needed on application of conditions for exemption
  - Proposal to make general (so far case-by-case) minimum requirements for capacity allocation and congestion management
- **Transparency**
  - Increased data provision, publication and record keeping requirements to decrease information asymmetry and enable ex-post analyses of activity of market participants
- **Access to storage**
  - GGPSSO to become binding
  - Legal and functional unbundling for storage system operators
  - Enhance powers of national regulators in overseeing access to storage
  - Increase clarity on regulatory regimes applied to storage facilities

B5

The proposals also address individual issues where deficiencies were identified

Improving market functioning (2)

- **Access to LNG** terminals
  - Imposing clearly defined TPA, capacity allocation and congestion management rules (via binding guidelines)
  - Definition of transparency requirements
  - Proposal of measures to spur secondary terminal-capacity market
- **Long term supply agreements**
  - Guidance from Commission on compliance of downstream long-term supply contracts with EC Competition law
- Framework for establishment of **EU retail market**
  - Retail Forum to promote EU-wide retail market
  - Binding guidelines defining rules for vulnerable customers
  - Strengthen rights of customers

B6

Member States to increase cooperation to protect each other from gas supply crises

Cooperation to reinforce security of supply

- **Security of supply monitoring** by TSOs
- **Cooperation** of Member States
  - Increased transparency obligations on the level of commercial stocks
  - Regional and bilateral solidarity in situations of severe disruptions of gas supply in a Member State

C

EC Competition Law uses 4 major instruments to watch over EU energy markets

Competition law toolbox

1 **Antitrust**

2 **Merger Control**

- National champions vs. Competition? (Gaz de France-Suez)

3 **TPA exemptions**

- 10 decision (7 LNG, 2 gas pipelines, 1 electricity IC)
- Aim is to promote infrastructure investments while fostering competition

4 **State Aid**

- Regulated tariffs: protecting consumers or protecting incumbents? (Cases against ES and FR)
- Power purchase agreements (PL, HU)

In addition:

continuous market monitoring and examination of complaints

C

DG Comp launched proceedings relating to alleged infringements across value chain

Antitrust (Articles 81 & 82 EC Treaty): recent cases

- **Collusion** (France and Germany)
  - EON/Gaz de France (gas)
- Market **foreclosure** through **long-term supply contracts** (Belgium and France)
  - Distrigaz (gas): commitments offered (case closed 11 October)
  - EDF und Suez/Electrabel (electricity)
- Market **foreclosure** through **barriers to grid access** (Germany, Italy)
  - RWE (gas): Market foreclosure by impeding third-party access to gas transport network in NRW (raising rivals' costs)
  - ENI (gas): capacity hoarding and strategic underinvestment in the transmission system (transit pipelines)

Road to a functioning energy market is still rocky but we are at an important junction

Conclusion

- *Current situation unsatisfactory after a decade of effort to open the market and recently implemented full market opening will likely not yield expected benefits of a competitive European energy market*

- *3rd liberalization package on internal market rules addresses major deficiencies; Proposals to be discussed in Parliament and Council in coming months*

- *EU and national competition and regulatory authorities play a key role in driving the sector towards ultimately achieving greater consumer welfare*