



EUROPEAN COMPETITION DAY: COMPETITION IN ENERGY MARKETS – SELECTED ISSUES

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31 May 2018

Competition law and energy regulation: interaction and potential for friction

- Energy related policy objectives are independent from competition law objectives and do not therefore necessarily coincide
- Selected key energy regulation policy objectives:
 - Reducing pollution
 - Security of supply
 - Liberalisation
- Competition law objectives:
 - Free and dynamic internal market (Article 3 TFEU states ..."necessary for the functioning of the internal market")
 - Ensure undistorted competition
 - Enhance consumer welfare



Challenges to legal certainty

- Lack of precedent
 - Commitments decisions in the energy sector are frequent
 - 14 out of the 39 commitments decisions adopted are related to the energy sector
 - Lack of precedent may generate uncertainty
 - Challenges arise for market players
- Policy goals pursued in competition enforcement
 - Legal uncertainty possible where competition law is used as an enforcement tool for lack of regulatory compliance



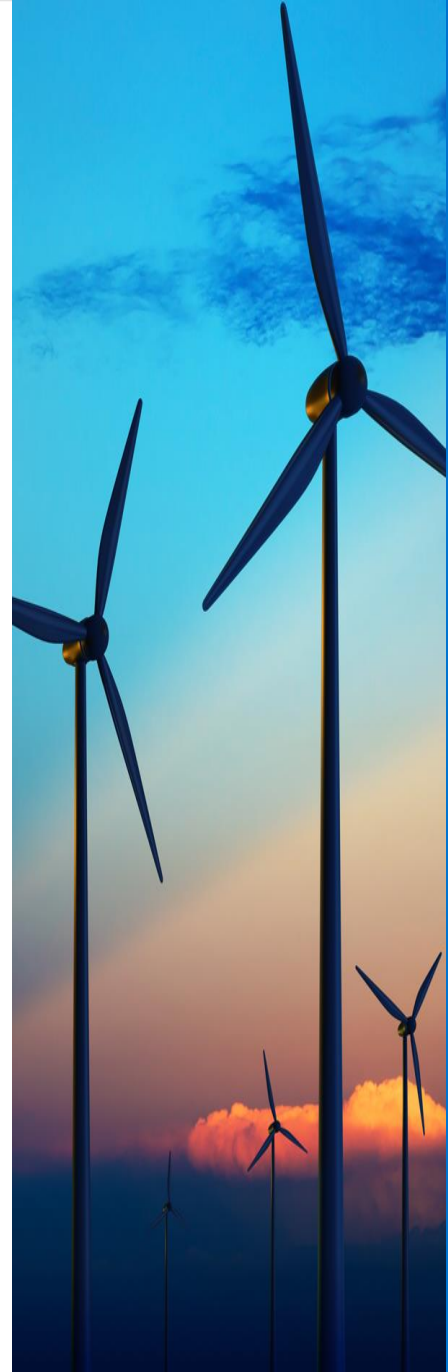
Challenges to legal certainty

- Other potential factors in the mix
 - Foreign Direct Investment screening mechanisms
 - Members States in the EU raised concerns over foreign investment
 - The EU Commission reacted by proposing a Regulation for the screening of FDI inflows into the EU
 - National Security concerns
 - Eg. Broadcom/Qualcomm deal was blocked on US national security grounds



Conclusion

- Competition law enforcement does not take place in a vacuum
- Objectives of competition policy vs. objectives of energy regulation → do not always dovetail
- Existence of parallel competition law competences between different authorities may create additional hurdles
- Enhanced interaction between energy and competition authorities may provide synergies and help tackle legal uncertainty



Daniel Colgan

Daniel Colgan is an experienced competition law specialist, who has practised in this field for almost 15 years. He joined DLA Piper, having prior to that spent most of his career in the competition law team of Freshfields Bruckhaus Deringer LLP.

Daniel's achievements have been recognised by his inclusion in the Global Competition Review (GCR) "40 under 40" survey 2016 as one of the 40 top competition law practitioners under the age of 40 in the world and his inclusion on the list of "Rising Stars" for competition and antitrust in the 2017 edition of Legal Media Group's Expert Guides. According to the Acritas Stars Survey 2018, Daniel has been nominated by various General Counsel as a stand-out lawyer.

Daniel's practice includes advising on a wide range of complex competition law issues in an international context, covering both the EU and national regimes. In particular, he focusses on the energy sector (including renewables, utilities, upstream, midstream & downstream oil & gas).

RECENT EXAMPLES OF RELEVANT EXPERIENCE:

- Advising on multi-jurisdictional merger control analysis and clearance processes with respect to the acquisition of wind farm assets in various jurisdictions.
- Rosneft/Morgan Stanley Oil Merchanting Unit: advising on the acquisition by Rosneft of Morgan Stanley's oil and petroleum products trading business.
- Advising companies active in crude oil production in the North Sea on a number of competition issues relating to the production, processing and distribution of their products.
- Advising a leading oil and gas company on the disposal of its African subsidiary companies. The transaction was one of the most significant M&A and financing deals in the energy sector in Africa at the time.



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AREAS OF EXPERTISE:

EU and global competition and antitrust law: international merger control, global cartel investigations, compliance and internal investigations, private enforcement, abuse of dominance, horizontal and vertical arrangements, State aid.

