

Competition Policy and Long Term Energy Contracting

Are consumers benefitting from the current policy?

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Long term contracts with energy users: why are competition authorities concerned?

- Risk of market foreclosure when dominant firms or a few firms with market power conclude contracts that are:
 - exclusive or quasi-exclusive
 - cover a substantial part of the market
 - have significant duration
 - do not generate countervailing efficiencies

Two models to deal with the concerns

- Foreclosure model (European Commission)
 - Maximum tied market share
 - 20% (*Distrigas*)
 - Cap on contract duration
 - 5 years (*Distrigas*) 10 years (*Exeltium*)
 - Efficiencies are taken into account
 - Supplies to new power plants excluded from *Distrigas* commitments
- Contract duration model
 - Cap on contract duration (Bundeskartellamt)
 - 4 years where alternative supplier for at least 20% of requirements
 - 2 years where that is not the case

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Do the models make sense?

- When is market access impeded ?
 - Is 20% tied market share significant?
 - Compare
 - *Van den Bergh Foods* (40%)
 - Vertical Restraints Guidelines (30-50% for network effects)
 - Does duration matter?
 - In *Distrigas* the Commission argues that some customers are strategically important and therefore need to be contestable

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Do consumers benefit?

- The current policy is based on the prisoner's dilemma
 - Individual users cannot influence the degree of competition. They therefore prefer to contract long term with the dominant firm to get the best deal it is willing to offer
 - Users collectively would be better off not contracting long term and instead help new entrants expand and impose an effective constraint
- Is this true in energy markets?
 - Prices are affected by underlying fundamentals (oil and gas prices)
 - Does this trump the "dominance effect"?
 - Price stability / predictability is highly valued
 - Do long terms contracts provide predictability?

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What can users do?

- Joint purchasing arrangements
 - With dominant firm (Exeltium)
 - Subject to Dstrigas model with some additional flexibility
 - Greater perceived benefit to users due to long term price formula
 - With new entrant
 - No competition concerns
- Joint production
 - Invest in generation (Finnish model)
 - Generally limited competition concerns due to efficiency. New capacity is added to the market.

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Long term import contracts and capacity reservations: Is this the next battle field?

- The Commission is investigating a case concerning alleged foreclosure due to the combination of long term reservation of transport capacity and a network of long term import contracts
- Market investigation by Bundesnetzagentur of long term capacity reservations
 - Is there a chicken and egg problem that you need capacity to conclude long term import agreements and a long term agreement to book capacity?
 - If so, is competition law the answer?
 - Is a dominant network operator obliged to share capacity that it needs for its own supply business?
 - What is the impact on security of supply?

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Thank you for your attention

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