

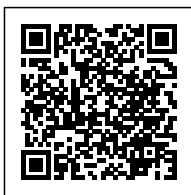
# A VIEW FROM LONDON: ENERGY UNDER INVESTIGATION

*Posted on 01/09/2005*



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Following the European Commission's EDP/EGP merger prohibition, participants in Iberian energy markets will know all too well that protecting and promoting effective competition in the European energy sector is high on the current agenda of the Commission. After a fair degree of advance publicity, they have now formally launched the promised sectoral inquiry into EU gas and electricity markets.

En este artículo Mark Jones, un abogado de Norton Rose (Londres), especializado en derecho de la competencia, regulación y UE, examina una investigación a cargo de la Comisión Europea en relación a los problemas de la competencia en el sector energético.

El mismo sugiere que esto puede representar una amenaza para quienes están actualmente involucrados y una oportunidad para aquellos que tengan interés en el mercado. Quizás se descubra acuerdos potencialmente anticompetitivos o abusivos de posición dominante de

mercado. Un posible resultado es que surjan recomendaciones para una legislación que promueva la liberalización del mercado de una forma aun más agresiva.

This responds to concerns from consumers and new market entrants about the development of wholesale markets and limited consumer choice. It will look at the reasons for recent energy price rises and other issues, and is being conducted in close co-operation with the national competition and regulatory authorities of EU Member States. The inquiry confirms the Commission's continued focus on perceived competition problems in the sector.

The Commission has been sending out questionnaires to a large number of companies at various levels in the market. Although this may at first sight be regarded as a high-level or even bureaucratic exercise with little direct impact on their business, recipients are well advised to take these seriously. Companies are legally obliged to reply to the questionnaire - providing incorrect, incomplete or misleading information or failing to reply within the given deadlines could result in fines. Of broader significance, energy sector participants will want to defend their strategic interests while taking advantage of the chance to bring to the Commission's attention competition issues which disadvantage their business. Potentially, the inquiry represents a threat to incumbent players and an opportunity for newer market entrants.

The Commission is likely to focus its inquiry on:

- Major supply contracts in upstream markets, in particular pricing and flexibility clauses.
- Gas infrastructure, in particular cross-border pipelines as well as storage and balancing.
- Barriers to entry in downstream markets, in particular long-term contracts and the prevention of supplier switching.
- Unbundling of network operators and affiliated companies.

The Commission aims to deliver an interim report this autumn and then a final report in 2006. Further questionnaires, possibly to a wider group of companies, should not be ruled out.

The Commission seeks to use its sector investigation powers to review markets where competition does not appear to be working well. One possible outcome is a recommendation for legislation, for example to promote further market liberalisation more aggressively. Another aim, however, is to gather information as to whether there are practices occurring which might breach the prohibition on anti-competitive agreements and abuses of a dominant market position. This could lead to fines of up to 10% of global group turnover and ending any prohibited conduct. It would be prudent for energy companies to review their current business practices and arrangements in order to ensure competition compliance.

Finally, businesses should also be aware that the Commission has broad investigatory powers in relation to its sectoral inquiries, including powers to launch unannounced "dawn raids" on business premises in order to review documents and electronic data and take copies. In the past they have been prepared to launch such raids in the context of a sector investigation.