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Towards a European Energy Community?

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Over the past years, the European Commission (the Commission) has made the completion of the internal markets of electricity and gas one of its priorities. In the Commission's view, the sustainable, competitive and secure supply of energy is not possible without open and competitive energy markets that enable European energy providers to compete across Europe. The creation of an integrated European energy market is seen as the key factor in improving the security of supply and in boosting competitiveness in the European Union. On this basis, the long awaited agreement regarding the Third Energy Package was finally reached in March 2009, providing the EU institutions with the necessary legislative and regulatory tools to move one step closer towards a European energy community.

However, the Commission has not patiently waited for the new legislation to be passed to take action in the energy markets. Competition Commissioner Neelie Kroes has used the full spectrum of the Commission's existing regulatory powers to ensure that energy companies and member states are not in a position to hinder the process of opening and unifying energy markets. Both through its application of the European Merger Control Regulation and articles 81 and 82 of the EC Treaty, the Commission is closely monitoring market behaviour and requesting structural remedies to open the European energy market. While the Commission is indeed prepared to solve cases with the acceptance of commitments proposed by energy groups, the recent fines imposed on E.ON and Gaz de France-Suez totaling a massive €1.1 billion send a clear message that the Commission will not hesitate to adopt radical measures against energy groups which allegedly deprive customers of effective price competition and maintain artificial barriers to cross-border competition.

This article will focus on the Commission's recent activity within the energy sector, outlining in particular its legislative and regulatory efforts in achieving an integrated energy market within the European Union.

Regulatory and political aspects

Action taken in the past few months has demonstrated the willingness of the EU institutions to progress towards an European-wide integration of the electricity and gas sectors in Europe. Such integration could only be achieved if the structural and regulatory issues, which the European market is faced with, are resolved. Further to its findings in the Final Report on the Energy Sector Inquiry published in January 2007, the Commission presented its 'Third Package' of proposals to further liberalise the EU's energy market in September 2007. Central to the proposals are measures aimed at ensuring the effective independence between the operation of electricity and gas transmission networks from supply and generation activities.

To achieve this goal, clear ownership separation, as already implemented by more than half of the member states in the field of electricity, and a growing number in the field of gas, is the Commission's preference. However a second option was also put forward which consists in the entrustment of the operation and investment controls to an independent system operator (ISO). While the latter is a more complex way of achieving the same goal, it allows the

ownership of the network to remain within the same group, usually the incumbent national operator.

A number of European countries that are home to big energy champions, notably France and Germany, have questioned the Commission's logic that further liberalisation must also include the breaking up of utilities, arguing that this may undermine energy security and drive up prices for consumers. In February 2008, eight member states (Austria, Bulgaria, France, Germany, Greece, Luxembourg, Latvia and the Slovak Republic) proposed an alternative measure to the Commission's proposals, which would guarantee a similar result without forcing energy firms to split their energy production and transmission businesses. This alternative method provided that the transmission system operators (TSO) could remain integrated with production and supply activities as long as a number of safeguards concerning the independence, management and investment decisions of the TSO are implemented by the respective energy groups. Although this third way was initially ruled out by Commissioner Kroes in February 2008, a compromise was subsequently reached by the European Parliament and the Czech EU presidency on 23 March 2009.

This long-awaited agreement regarding the so called 'Third Energy Package', was announced after negotiations had dragged on for more than a year due to substantially different views on the issue of 'unbundling'. The members of the European Parliament insisted throughout the discussions that the Commission's proposal of full unbundling was the only option for electricity, and that the creation of a TSO should be promoted in the gas sector. The Council, under pressure from both France and Germany, indicated that the TSO option should apply for both electricity and gas sectors. Ultimately the European Parliament dropped the Commission's demand that full ownership unbundling had to be the only option for the electricity market.

The compromise reached in March 2009 allows energy companies to opt for two alternative models which give them the possibility of retaining ownership of their gas pipelines and electricity grids. This is, however, on the condition that they either hand over the operation of their transmission networks to an ISO, or adhere to rules which guarantee that the two sectors can operate independently with the establishment of a TSO.

The main measures guaranteeing this independence include:

- a supervisory body to take decisions where there is a large impact on shareholders;
- mandatory 'cooling off' periods to restrict the crossover of managerial level staff between energy supply and generation companies and transmission operators; and
- a supervised compliance programme to prevent discriminatory conduct.

The Third Energy Package also establishes a European Network of Transmission System Operators (ENTSO) for electricity and gas to implement common codes and security standards and to facilitate cross-border trade by creating equal operating conditions in different member states. A cooperation agency to coordinate actions from the

national energy regulators has also been created. The legislation also provides that consumers will be able to change their gas and electricity suppliers within three weeks free of charge, and have access to more information, independent mechanisms for treating complaints and compensation for service failures. Finally, energy poverty was also dealt with in the texts, which requires member states to guarantee universal service to all household customers.

On 25 June 2009, the Council unanimously adopted the Third Energy Package which formally comprises:

- the Directive concerning common rules for the internal market in electricity;
- the Regulation on conditions for access to the network for cross-border exchanges in electricity;
- the Directive concerning common rules for the internal market in natural gas;
- the Regulation on conditions for access to the natural gas transmission networks; and
- the Regulation establishing an agency for the cooperation of energy regulators.

The Directives and Regulations will be published in the EC Official Journal in August 2009 and enter into force on the twentieth day following their publication. The Electricity and Gas Directives will need to be transposed into national law 18 months after entry into force with the exception of the rules on unbundling of transmission, which are to be transposed after 30 months. Finally, the new agency needs to be up and running 18 months after entry into force of the Agency Regulation. Also the Electricity and Gas Regulations shall apply 18 months after their entry into force and by that time, at the latest, the national TSOs are required to submit the founding documents for the new electricity and gas ENTSOs and the cooperation Agency. By maximum eight months thereafter the ENTSO for both gas and electricity need to be put in place.

Anti-competitive agreements and practices

In the past several months the Commission has not been shy of using its powers granted by regulation 1/2003 to send a 'strong signal to energy incumbents that the Commission will not tolerate any form of anti-competitive behaviour'.

The Commission has put Commissioner Kroes' warning into application on 8 July 2009, when it imposed the second highest fines ever for companies participating in a cartel, with E.ON and Gaz de France-Suez each receiving a fine of €553 million. Further to raids conducted at the premises of both undertakings in Germany and France in 2006, the Commission concluded that Ruhrgas AG (now part of E.ON) and Gaz de France (now part of Gaz de France-Suez), agreed in 1975, when they decided to jointly build the MEGAL pipeline across Germany to import Russian gas into France and Germany, not to sell gas transported over this pipeline in each other's home markets. They allegedly maintained their market sharing agreement after the European gas markets were liberalised and completely withdrew from it in 2005. Both companies have indicated that they will appeal the Commission's decision to the Court of First Instance (CFI), arguing that the agreement signed in 1975 was necessary to secure investment for the pipeline. One can also be surprised with the Commission's reasoning in view of the fact that that before 2000, no third-party access to the transport gas network existed and both the French and German markets were legally characterised by legal monopolies. Taking the above into consideration, it will be interesting to see how the CFI assesses the Commission's claim that this arrangement harmed consumers given

that Ruhrgas and Gaz de France were legal monopolies for most of the period.

The Commission has also opened several formal proceedings against energy companies. In December 2008, following an ex-officio investigation opened in July 2007, the Commission has sent a statement of objections to *Électricité de France* (EDF) alleging that the French historical electricity operator abused its dominant position on the French market. The Commission is concerned that contracts concluded by EDF with industrial customers in France may prevent customers from switching to other providers, thereby reducing competition on the market, in particular when considering the exclusive nature and duration of the contracts and the share of the market that is tied by them. Under the same contracts, the Commission has also pointed out that the resale of electricity appears to be restricted. Overall the Commission is concerned that these practices have made it difficult for suppliers to enter and expand their activities in the French electricity markets and that they may also have rendered the wholesale market for electricity less liquid.

More recently, in March 2009, following another ex-officio investigation which involved surprise inspections at the company premises, the Commission sent a Statement of Objections to ENI, the Italian state-owned energy provider. The Commission's investigation focuses on the management and operation of ENI's transmission pipelines allowing the import of natural gas from delivery points in Austria (TAG pipeline) and Germany (TENP and Transitgas pipelines) to Italy. The Statement of Objections alleges that ENI has abused its dominant position on the Italian gas transmission market by refusing to grant access to capacity available on the transport network (capacity hoarding), granting access in a less useful manner (capacity degradation) and limiting investments in the development and maintenance of ENI's transmission pipeline system (strategic underinvestment). These practices allegedly took place despite very significant short- and long-term demand from third party shippers. It is understood that ENI is considering whether to offer voluntary remedies to the Commission with a view to settle this antitrust probe in accordance with article 9 of Regulation 1/2003.

Finally, the Commission also decided in April 2009 to initiate proceedings against the Swedish electricity TSO, Svenska Kraftnät (SvK), for possible breaches of the EC Treaty's antitrust rules on the abuse of a dominant position. The Commission believes that SvK may be abusing its position as the Swedish monopoly electricity transmission service provider by limiting export transmission capacity on Swedish interconnectors to neighboring countries and thereby hindering the proper functioning of an integrated European electricity market. The Commission's action in this case is a textbook example of its commitment to find a structural solution to the problems identified in its Final Report on the Energy Sector Inquiry of 2007. Indeed, one of the three major structural reasons for the malfunctioning of the electricity markets identified by the Commission was the insufficient inter-connector capacity and congestion at the borders which prevented spare capacity on the network to be released.

But the Commission has also been successful in receiving considerable commitments from undertakings wishing to close the Commission's proceedings and escape the possibility of receiving a hefty fine. In March 2009, further to successful market testing, the Commission adopted a decision rendering legally binding the commitments offered by RWE in May 2008 to address the Commission's concerns raised in the course of an article 82 investigation. The Commission had concerns that RWE had abused its dominant

position on the gas transmission network to restrict its competitors' access to the network by refusing to supply gas transmission services to competing companies. The commitments put on the table by RWE provide that it will sell its gas transmission system network in the west of Germany to an independent operator which will have to be approved by the Commission.

The Commission had already adopted a similar decision a few months earlier, in November 2008, rendering legally binding commitments offered by E.ON to offset the Commission's concerns that it abused its dominant position on the German electricity market by withholding available generation capacity and favoring its own production and supply affiliates as a TSO. Accordingly, E.ON offered to divest generation capacity in Germany from different types of technology and fuels (hard coal, gas, pump storage and nuclear) to remedy the Commission's concerns on the wholesale electricity market. In addition, E.ON proposed to divest its transmission system business consisting of its extra-high-voltage network. The actual divestments will be carried out under the supervision of a trustee.

Finally, in July 2009, the Commission initiated the market testing of the commitments offered by Gaz de France-Suez to remedy concerns that it might have abused its dominant position in the French gas market. Similarly to the case made against ENI, the Commission appears concerned in particular that Gaz de France-Suez might be closing off competitors from access to gas import capacity into France. While not formally acknowledging any infringement, the French operator offered a structural reduction in its long-term reservations of gas import capacity into France. It is interesting to note that the Commission has reviewed the commitments in close cooperation with the French energy regulator, the CRE, which is again perfectly in line with its efforts to promote more coordination between national energy regulators. Commissioner Kroes has taken a positive stance in regards to this commitment proposal as she believes that the commitments will 'make it easier for would-be competitors to enter the French gas market and so contribute to delivering the benefits of the Single Market to French energy consumers in terms of greater choice of gas supplier and more competition on prices.'

Merger control

Despite Europe's current economic climate, large scale transactions are still taking place in energy markets. Supporters of concentration in the energy sector point out that only large utilities are able to shoulder the huge investments in electricity lines and interconnections and natural gas terminals and pipelines that EU market integration entails. After several years of acquisitions and mergers, the EU is now dominated by a few cross border giants, such as Italy's Enel, which is 31.2 per cent owned by the Italian state, Germany's E.ON and RWE, and France's state-controlled EDF and Gaz de France-Suez. It is interesting to see that all these market players have continued their acquisition spree in the past year, reinforcing their positions in an increasingly narrowing European energy market.

In Spain, after years of legal fights and endless discussions between government heads and regulators, the saga of Endesa, a Spanish electricity provider, and Enel, the Italian energy giant, came to an end on 20 February 2009 with the Commission approving the acquisition of sole control of Endesa by Enel.¹ The saga had started in 2005 when the Spanish government attempted to force Endesa to join forces, against its will, with another Spanish utility, Gas Natural, in an effort to create a national champion with a foothold in both gas and electricity. However, the plan instead resulted in Endesa being acquired by Enel, Italy's leading energy company. Indeed Endesa

engaged in a fight with the Spanish government in order to fend off this misplaced attempt to merge it with Gas Natural. Sensing an opportunity, E.ON made a bid for Endesa in 2006. Spain did everything it could to fend off E.ON, prompting the European Commission to intervene and launch a formal infringement proceeding against Spain in January 2008. In the end, in an attempt to appease national feelings, Enel eventually acquired joint control over Endesa in 2007 together with a Spanish partner, Acciona. Further to subsequent negotiations, Enel acquired sole control of Endesa by buying out Acciona's 25 per cent stake for €11.1 billion earlier this year.

The French electricity incumbent, EDF, has also been active recently in developing its activities outside of its national market. Hence, with the support of the UK government, EDF in December 2008 acquired state-owned British Energy, specialised in nuclear energy, for €15.6 billion. However this acquisition came at a higher cost for EDF as the Commission required far-reaching commitments from both parties in order to clear the transaction, even though the merged group would not have high market shares in electricity generation, distribution or supply.² Under the revised terms imposed by the European regulator, EDF agreed to sell one of its generating plants at Sutton Bridge and British Energy's only coal-fired plant, in addition to divesting a site potentially suitable for building a new nuclear power station in the UK. It also committed to sell minimum volumes of electricity in the UK wholesale market. Finally, EDF also agreed to end one of the merged group's three connection agreements to the electricity grid as the Commission found that the group's capacity expansion plans rendered this unnecessary and it could unduly delay rivals' own generation projects. Unsurprisingly, these commitments are in total accordance with the Commission's recommendations set out in its Final Report on the Energy Sector Inquiry of 2007.

In June 2009, Vattenfall, the largest utility in the Nordic region, also took part in a big energy takeover by purchasing Nuon Energy, a Dutch energy firm, for €8.5 billion.³ Through this transaction, Vattenfall, ultimately controlled by the Swedish State, and which has different activities along the entire energy chain mainly in Sweden, Germany, Finland, France, Denmark and Poland, is able to get a foothold in the production and supply of electricity and gas in the Netherlands and Belgium. The Commission eventually requested that Nuon's retail activities in Germany be sold to a suitable purchaser.

One will not fail to see that the transactions above, while conforming to a certain level of openness of the European energy market do not entirely fit with the Commission's overall desire of seeing the end of government interventionism and the end of national champions. The Spanish complain that, whereas the government privatised Endesa in 1997 in order to improve production efficiency and reduce electricity prices, the utility firm has now fallen back into the hands of the government, but of Italy given that Enel is 31.2 per cent owned by the Italian state. It is somewhat ironic that by failing to create a national champion, the Spanish government indirectly strengthened another member state's national champion. Likewise, the UK no longer owns its nuclear resources as British Energy is now controlled by the French state through its 81 per cent stake in EDF.

However, not all energy companies active on the M&A front are state-owned companies. In January 2009, RWE, one of Germany's largest utilities active both in the electricity and gas fields, agreed to buy the Dutch firm Essent for €9.3 billion.⁴ This transaction was ultimately cleared by the Commission further to limited divestments. At this point it is interesting to note that in September 2007 the Dutch competition authority (NMa) de facto forced Nuon

and Essent to call off their merger talks to create the tenth largest energy company in Europe. At the time, the NMa considered that a national champion should not come at all costs and that it could be more beneficial for the Dutch consumer to have two competing providers of energy in the country, be they Dutch or controlled by foreign utilities. At a time when certain member states show their claws to defend economic nationalism, the position taken by the Dutch is refreshing.

Finally, the Commission has recently reminded European corporates that despite the difficult economic climate, it will use its full powers to strictly enforce the European merger control rules. In June 2009, the Commission fined electricity producer and retailer Electrabel, part of the Gaz de France-Suez group, €20 million for failing to notify its acquisition of French Compagnie National du Rhône (CNR), another electricity producer. This is the first time since the new merger regulation came into force in 2004 that the Commission has made use of its powers to impose a fine on parties to a merger for failure to notify and, according to Commissioner Kroes, this 'sends a clear signal that the Commission will not tolerate breaches of this fundamental rule of the EU merger control system'. While Electrabel formally notified this acquisition in March 2008, the Commission initiated its investigation in August 2007 following the acquisition of Suez by Gaz de France during which the issue of control over CNR was raised. The Commission has considered that Electrabel enjoyed controlled over CNR since 2003 when it acquired shares in the French company and took over the function of operational management of power plants and marketing of electricity. Thus, by failing to notify the transaction before 2008, Electrabel breached the suspension obligation for a period of over four years following the acquisition of control.

Infringement proceedings against member states

As recently indicated by Energy Commissioner Andris Pielbargs: 'The Commission is determined to take all necessary action to ensure that European consumers can benefit from real choice, better prices, and enhanced security of supply that only an open and competitive market can provide.' In the pursuit of its goal to create a European energy market, the Commission has also focused on taking action against member states themselves.

One of the most striking examples of the Commission's commitment to take the fight all the way took place in June 2009, when the Commission launched infringement proceedings against 25 member states for inadequate efforts to encourage competition in the energy sector with reference to the Second Energy Package of 2003.⁵ These member states will be receiving letters of formal notice for not complying with applicable gas and electricity regulations. At the same time, the Commission also sent letters of formal notice to Greece, Poland, Portugal, Romania and Lithuania for maintaining a system of regulated prices in violation of the EU directives on electricity and gas.

The main violations identified by the Commission reflect its findings in the Final Report on the Energy Sector Inquiry of 2007 and relate to:

- the lack of information provided by electricity and gas TSOs which prevents effective access of energy suppliers to electricity grids and gas pipelines;
- the inadequacy of network capacity allocation systems to optimise network use for electricity and gas transmission in member states;
- the lack of coordination and cooperation across borders by electricity TSOs and national authorities, which is necessary in order

to better allocate network capacity on cross-border interconnections so that the use of the existing electricity grid is optimised on a regional and European basis instead of on a national basis;

- the inadequate efforts by gas TSOs to make maximum capacity available in order to optimise opportunities for market entrance and competition;
- the lack of effective enforcement action by the competent authorities in member states in case of violations of the EU regulations, including the absence of effective systems of penalties at national level; and
- the persistence of regulated prices, especially for the benefit of large customers, putting obstacles in the way of new market entrants and the absence of adequate dispute settlement procedures for consumers at national level.

Member states' activities

In parallel with the Commission's actions at the European level, national competition and energy regulators have also stepped up their activities in the investigation of mergers and antitrust violations within their jurisdictions.

In the UK, further to the probe launched into the energy supply markets by the UK energy regulator, Ofgem, on 21 February 2008, the UK energy regulator published in October 2008 its findings from the investigation. The report found that the level of wholesale market liquidity, especially in the electricity market, was of concern and Ofgem announced that it would investigate this further. Industrial customers have also raised concerns about wholesale liquidity, suggesting that inadequate liquidity in the UK is acting as a barrier to new entry into supply markets and may be a source of competitive disadvantage to small suppliers. Ofgem has indicated that it would initiate bilateral meetings with market participants and has encouraged all interested parties to comment on the report's findings. In January 2009, Ofgem closed its investigation against Scottish Power and Southern Energy, initiated further to a complaint that both operators had abused their dominant position in the electricity generation sector arising from constrained capacity on the transmission network.

In France, following a decision from the French Conseil de la concurrence closing article 82 proceedings against EDF further to remedies made up of a volume of electricity to be sold to alternative suppliers in France, Direct Energie, the initial complainant, challenged the decision before the Paris Court of Appeal. However, in October 2008, shortly before the actual court hearing, Direct Energie decided not to go through with its appeal and withdrew it. In a separate case, in March 2009, the newly established French competition authority imposed a fine of €320,000 on a joint venture between EDF and Gaz de France-Suez for abusing its dominant position in the supply of electricity for the city of Grenoble. While it is true that the size of the fine can appear reasonable, it has to be put into perspective of the very narrow market on which the joint venture was active. On this basis, the decision from the French authority sends a strong message to energy operators that it is committed to strictly enforcing the competition rules at a local level in the energy sector given the direct impact it has on consumers.

In Spain, Gas Natural and Union Fenosa notified their proposed merger to the Spanish competition authority in October 2008 with a view of creating the leading integrated gas and electricity company in Spain further to Enel's acquisition of Endesa. In February 2009, the Spanish regulator approved the proposed merger subject to commitments offered by Gas Natural following the investigation's conclusions that the merger would reinforce the dominant position of Gas

Natural in the Spanish gas sector and reinforce Fenosa's position as number three in the electricity sector. The Spanish authority also initiated antitrust investigations, one of which resulted in electricity distributor Hidrocanabrico Distribucion being fined €833,000 in April 2009. Following its investigation, the authority decided that the company's refusal to disclose information relating to consumers to a downstream undertaking, Centrica, amounted to a breach of the Spanish provisions regarding the abuse of a dominant position and article 82 of the EC Treaty. Further to this case, the Spanish authority recently launched a new investigation in June 2009 targeting electricity companies including Endesa, Iberdrola, Hidrocanabrico, Unión FENOSA and E.ON over potential anti-competitive collusion in the supply of electricity to downstream customers. The authority recently adopted interim measures in this case.

Finally, following the recent commitment to pursue an effective application of the competition rules in local markets, further to complaints from competitors, the Italian competition authority has opened investigations into major distributors of gas and electricity (Italgas, Acea Distribuzione, A2A Reti Gas and A2A Reti Elettriche) to assess whether these distributors have abused their dominant position in respective local markets to prevent domestic clients and small companies taking advantage of liberalised gas and electricity markets to change supplier.

This series of cases demonstrates that the national competition authorities, just as the Commission, are committed to use existing competition rules to force open their national markets.

The Commission's and national regulators' recent enforcement record clearly demonstrates their commitment to continue implementing the findings of the Energy Sector Inquiry. Despite the difficult economic environment, energy companies should not expect a more flexible and lenient application of the European competition rules by the Commission. The Gaz de France-Suez group was recently confronted with this cold reality, receiving two bumper fines for infringements to both the European merger control rules and the antitrust rules.

With the recent adoption of the 'Third Energy Package' the Commission is going to be eager to enforce in each member state the latest measures which have been adopted, particularly with regards to the independence requirement of the network operations from the supply activities. While the proponents of the third way managed to get what they wanted and keep some room to manoeuvre, the inquiries of DG Competition into integrated companies will continue and may lead such companies to commit to full ownership unbundling of their networks anyway, thereby following RWE and E.ON's recent commitments in this sense.

Notes

- 1 Case COMP/M.5494 *Enel/Endesa*.
- 2 Case COMP/M.5224 *EDF/British Energy*.
- 3 Case COMP/M.5496 *Vattenfall/Nuon*.
- 4 Case COMP/M.5467 *RWE/Essent*.
- 5 The 25 member states are Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden and the United Kingdom.

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O'Melveny & Myers LLP offers seamless antitrust and competition representation in Europe, Asia, and the United States and is well situated to advise on the transnational implications of deals. Few firms can match our consistent strength across these three major economic areas.

O'Melveny's European antitrust and competition practice, based in Brussels, was established in 2004 by managing partner Riccardo Celli. The office focuses on EU and European national competition and regulatory law, advising clients on the complete range of competition/antitrust, regulatory and trade issues. Our lawyers are qualified in most EU member states, are experienced practitioners of the various national laws and procedures, work closely with local authorities, and are accustomed to coordinating complex cross-border projects. These strengths enable O'Melveny to represent clients in multi-jurisdictional proceedings with efficiency and shared expertise.

Since 2004, the Brussels office has been successful in a series of high-profile cases covering all main areas of EU competition law (article 82, mergers, and cartel cases). We recently secured a historic victory for client Advanced Micro Devices in its global antitrust battle with Intel when the European Commission fined Intel €1.06 billion (US\$1.44 billion) for abusing its dominant position in the x86 microprocessor market. This was the largest ever fine set by an antitrust regulator.

We have significant experience in the energy sector, advising large multinational oil and gas companies on all aspects of regulatory, US and EU competition laws. O'Melveny is recommended as a leading antitrust and competition law practice in *Global Competition Review's* 'GCR 100.'



Riccardo Celli

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Riccardo Celli is the managing partner of O'Melveny's Brussels office and head of the firm's European antitrust and competition practice. He has a double qualification as an Italian *avvocato* and a solicitor of the Supreme Court of England and Wales. Riccardo has practised in Brussels since 1992 and has extensive experience advising on EU, Italian and UK competition law, as well as regulatory law, particularly in the energy sector. He has represented many of the world's largest energy companies – including Norsk Hydro, BP and ENI – in mergers, cartel investigations and article 82 cases. He successfully represented several oil companies in the GFU investigation by the European Commission. More recently, he represented Norsk Hydro in obtaining EU merger control clearance for the merger of its oil and gas activities with Statoil – a US\$30 billion deal – and in obtaining unconditional phase II clearance for Norsk Hydro's US\$1 billion sale of Kerling AS to UK-based INEOS.

Riccardo has been involved in high-profile cases covering all main areas of EU competition law, achieving headline-grabbing results for clients. Most recently, Riccardo led the O'Melveny-Brussels team that advised AMD in its article 82 complaint against Intel that culminated on 13 May 2009 when the European Commission fined Intel a record €1.06 billion (US\$1.44 billion) for its anti-competitive practices.

Riccardo is a frequent conference speaker and has authored numerous articles on competition law and regulatory matters, especially in the energy sector. He is recognised globally as a leading antitrust/competition lawyer in many specialised publications.



Christian Riis-Madsen

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Christian Riis-Madsen is a partner in O'Melveny's Brussels office. Christian is a member of the Danish and Brussels bars and focuses on EU competition law and EU regulatory law as well as Danish competition law.

Christian has significant experience with the application of competition law and EU regulatory law to the energy sector. He has represented energy companies in mergers, cartel investigations and article 81 counselling relating to both up-stream and down-stream activities. He represented Norsk Hydro in obtaining EU clearance for the merger of its oil and gas activities with Statoil and in obtaining unconditional phase II clearance for its US\$1 billion sale of Kerling AS to UK-based INEOS. He was also involved in the GFU cartel investigation in which he successfully represented two oil companies which were among the 30 companies targeted by the EC's probe into US\$160 billion of natural gas supplies from the Norwegian continental shelf. Christian has also assisted EU member states with the implementation into national law of the EU Gas and Electricity Directives.

Other recent matters include representing AMD in its historic article 82 complaint against Intel in which Intel was fined a record €1.06 billion and successfully obtaining the acquittal of Léon van Parys, the European importer of 'Bonita' bananas, in a banana cartel investigation which ultimately led to the imposition of fines amounting to more than €60 million on other banana importers.

Christian handles notifications to the European Commission, national competition authorities, and coordinates filings in jurisdictions ranging from South Korea, China and Japan, to Canada, South Africa and Brazil.



Philippe Noguès

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Philippe Noguès is an associate in O'Melveny's Brussels office and a member of the firm's European antitrust and competition practice. Philippe is a member of the Paris and Brussels bars. He focuses on EU and French competition law, and on the coordination of multi-jurisdictional matters. Philippe advises in the fields of mergers and acquisitions, anti-competitive agreements, concerted practices and abuse of dominant position in relation to various industry sectors such as energy, aviation, mineral resources, automotive, and pharmaceutical.

Recent work includes representing Northwest Airlines in obtaining Phase I EC clearance without remedies or conditions in its merger with Delta Air Lines. In this precedent-setting outcome the Brussels team was successful in persuading the EC of the fact that there was no prospect of the merger significantly impeding effective competition on transatlantic routes between the US and the EU because of the two airlines' existing relationship with Air France/KLM and their common membership of SkyTeam. More recently Philippe represented AMD in its article 82 complaint against Intel that culminated on 13 May 2009 when the European Commission fined Intel a record €1.06 billion (US\$1.44 billion) for its anti-competitive practices.

Philippe also has experience with the application of competition law and EU regulatory law in the energy sector. Most notably he successfully represented Suez during the *Gaz de France/Suez* merger proceedings in obtaining a conditional clearance following a Phase II review. Philippe has authored a number of articles on competition law, especially in the field of leniency and in the energy sector.