

Study on Competition Policy and an Internal Energy Market

Brussels, March 21 2017

ECORYS



European Parliament



Aim of the presentation

- Information about our approach/methodology;
- Aim:
 - **Presentation** of the objectives, key issues and interim findings of the study;
 - **Discussion** of the main issues;
- Many of the issues discussed have been identified by Members of Parliament and mentioned in the Terms of Reference - Ecorys has added and built on these issues
- To provide context, we start with a general introduction of the European Energy Market and major policy developments.

Aim and methodology of the study

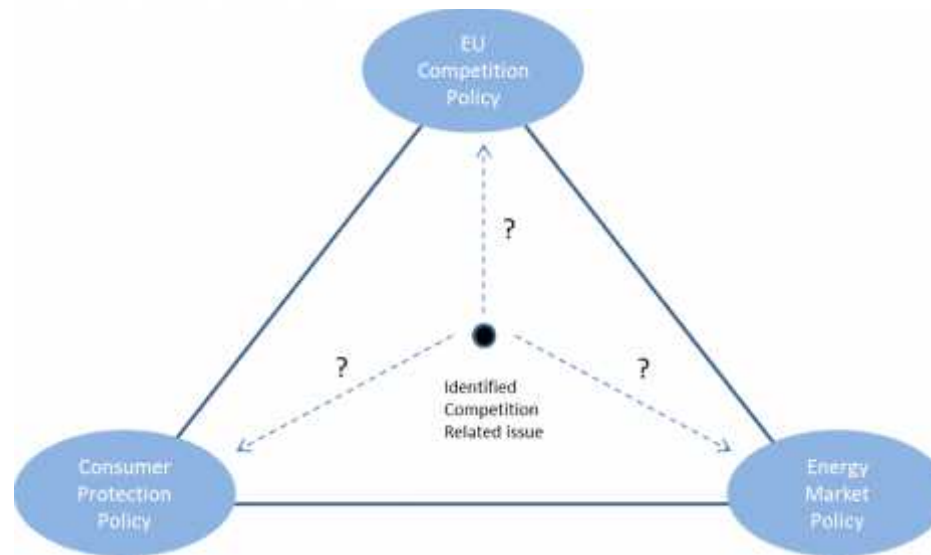
Aims of the study

The study aims to:

- Provide an overview and address the currently most important problems and imminent questions in the energy sector related to competition;
- Identify the implications of these issues on the internal market;
- Provide an overview on how these issues can be addressed by competition policy or other rules/policy instruments.

Approach and methodology

1. Identification of competition issues in the field of the internal energy market;
2. Making a distinction between issues relevant to competition policy instruments and issues relevant to other policy areas;



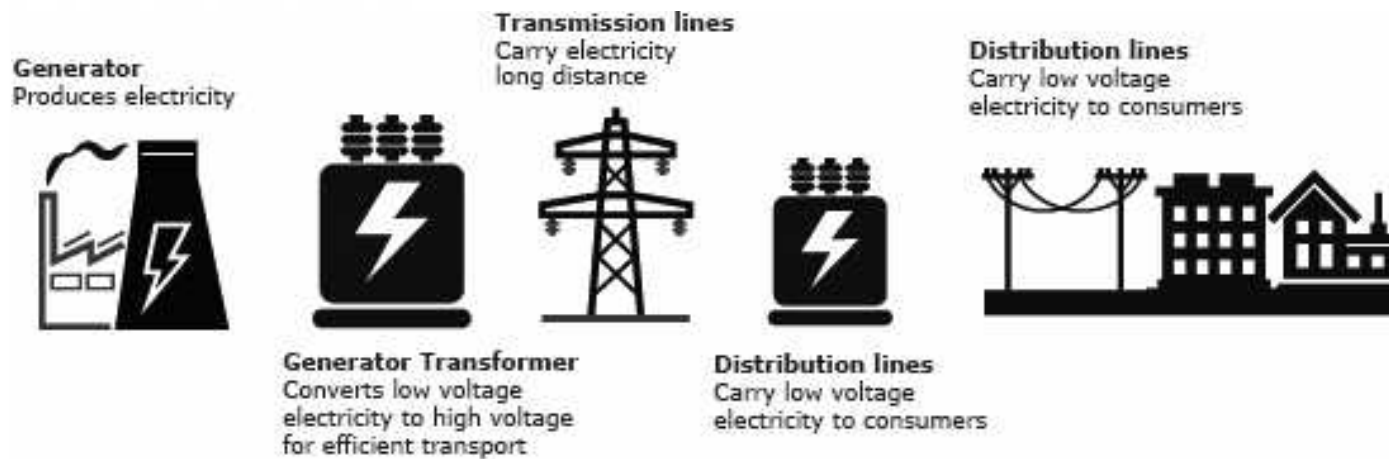
3. Mapping of existing research and solutions offered by EU competition law.

Overview of the EU Energy Market

Basic structure of the EU electricity system

- Generation

- Retail market



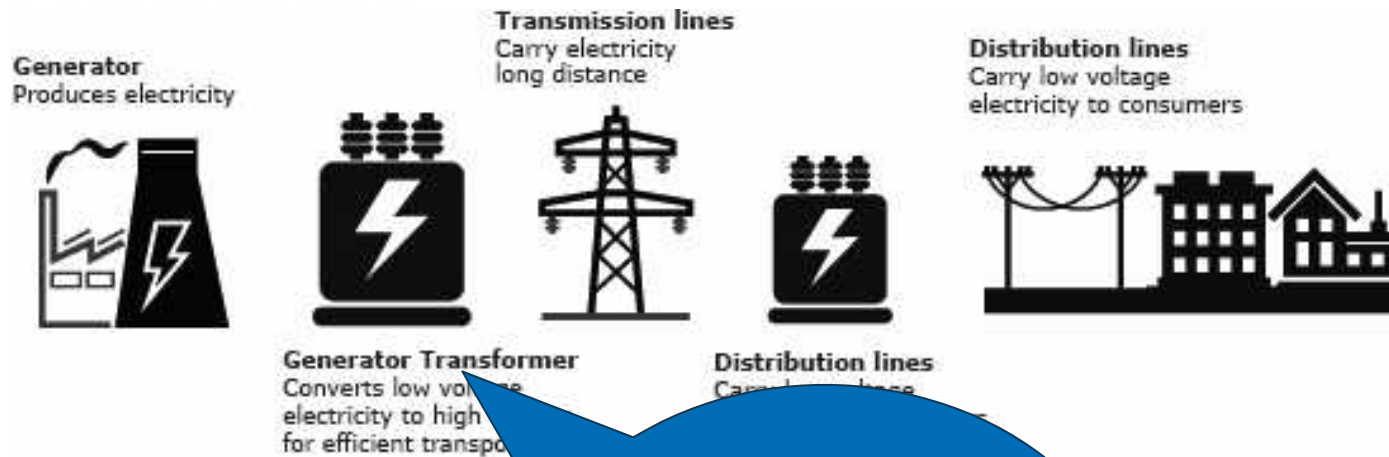
- Wholesale market

- Consumption and decentral generation

Basic structure of the EU electricity system

- Generation

- Retail market



- Wholesale market

- Consumption and decentral generation

The structure is changing, which leads to new challenges

The EU Energy Union Strategy has five pillars...

Energy Union Strategy

Energy security, solidarity and trust

A fully integrated European energy market

Energy efficiency contributing to moderation of demand

De-carbonising the economy

Research, Innovation and Competitiveness

... and leads to new initiatives

- Third package on the Internal Energy Market (2009):
 - Directive on the promotion of the use energy from renewable sources;
 - Directives concerning common rules for the internal market in electricity and natural gas;
 - Regulation on conditions for access to the network for cross-border exchanges in electricity;
 - Regulation establishing an Agency for the Cooperation of Energy Regulators;
- Guidelines on State aid for environmental protection and energy 2014-2020, 28 June 2014, COM (2014), OJ C 200/01;
- Recent proposals regarding the governance of the Energy Union, to promote the use of renewable energy and the internal market for electricity, low-emission mobility, ...

Theoretical background & practical implications

Competition policy

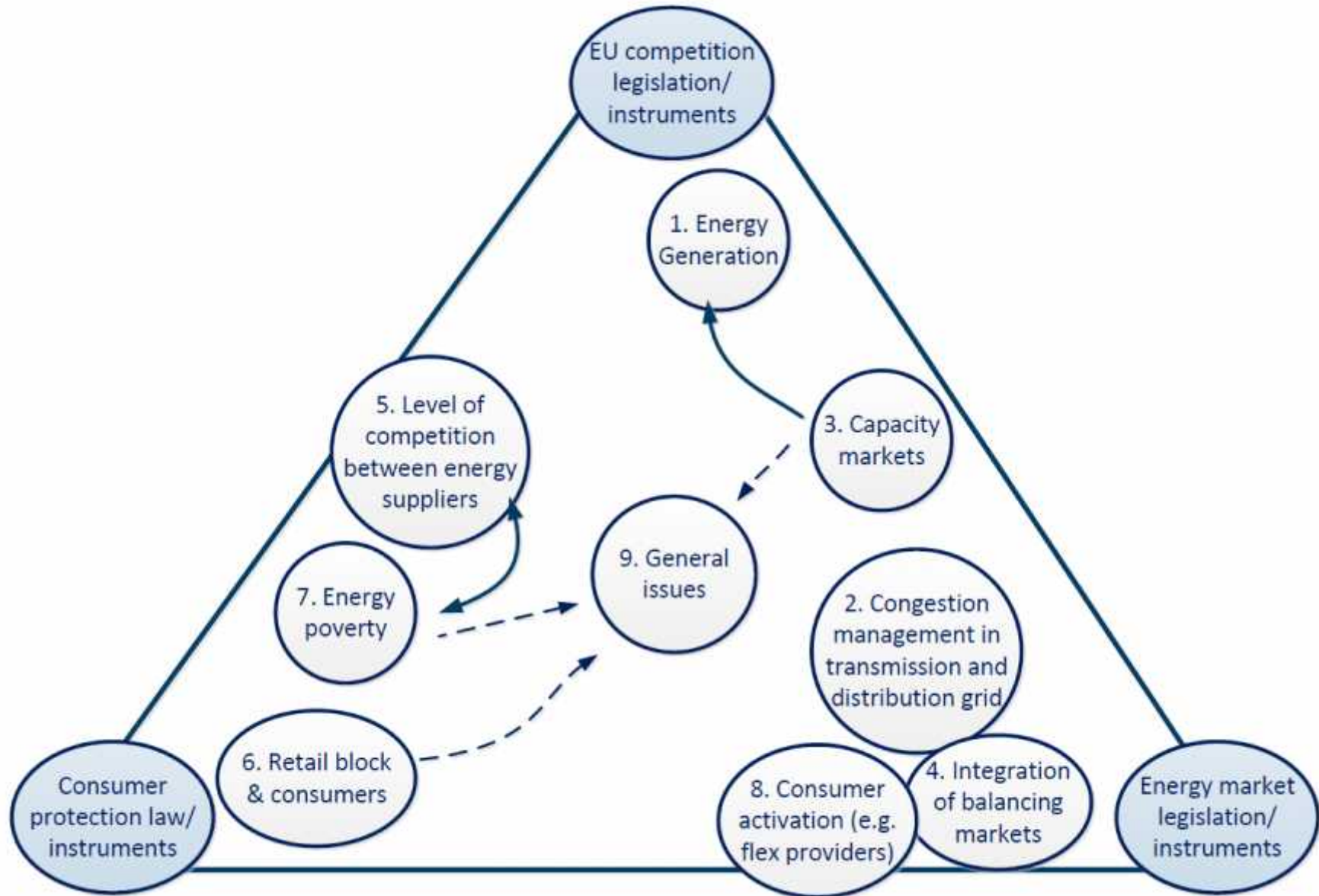
Competition policy instruments

1. Competition law instruments: they are used by the EC and specific Member State governments to deal with competition cases;
 - Antitrust (including cartel prosecution and measures against the abuse of dominance);
 - Merger control;
 - State Aid;
2. Sector specific regulation: e.g. Energy Market regulations;
3. General rules addressing specific competition problems, such as consumer protection regulation.

Nine selected topics

1. Energy Generation and State aid;
2. Congestion management in the transmission and distribution grid;
3. Capacity remuneration mechanisms;
4. Integration of balancing markets;
5. Level of competition between energy suppliers;
6. Retail and consumers;
7. Energy poverty;
8. Consumer activation;
9. General issues.

Energy policy triangle

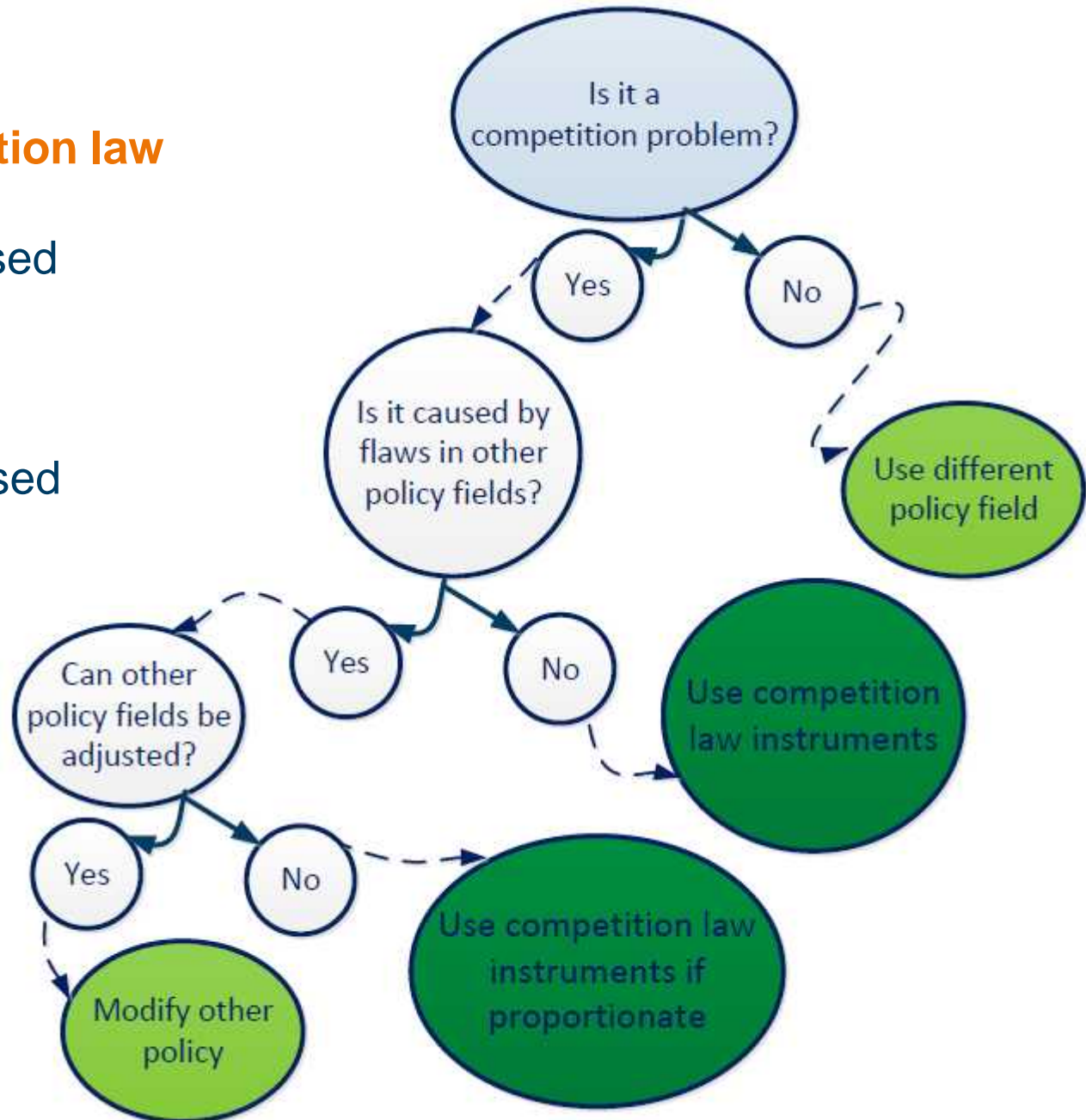


Competition law

When to use competition law

1. Issues to be addressed by competition law;
2. Competition law addressing issues caused by other policies.

And when to use other policies?



Competition policy and the Internal Energy Market

Generation

Topic 1 - Energy Generation and State aid

Issue:

- No level playing field for different technologies through national renewable stimulation mechanisms;
- Policy fragmentation on EU-level has an impact on competition within the EU.

Solution:

- Ensure national renewable stimulation **mechanisms/energy market regulations** are in line with State aid regulations by design, as violations of **State aid** regulations can be difficult to detect (aid needs to be technology-neutral and proportionate, e.g. no paramount subsidies for solar while other renewables are treated disadvantageously);
- **Harmonization** of national energy policies with significant impact on the internal market.

Wholesale market

Topic 2 - Congestion management in the transmission and distribution grid

Issue:

- No level playing field for different electricity suppliers;
- Room for strategic behavior of market players and misuse of market power in energy production and transmission e.g. through capacity withholding;
- Integration of new market entrants ('aggregators') to increase flexibility (distribution grid).

Solution:

- **Non-discriminatory CM design** (independent TSO's and DSO's, policy framework with clear roles and responsibilities, embedding new market actors, and allocation of capacity on a non-discriminatory basis);
- More **short-term scheduling** of cross-border transmission capacity.

Wholesale market

Topic 3 - Capacity remuneration mechanisms

Issue:

- No level playing field for different technologies;
- Policy fragmentation on EU-level affects competition;
- Strategic reserves may erode investment incentives for new capacity and distort the market (e.g. discouraging the development of new, efficient plants).

Solution:

- **Non-discriminatory and competitive capacity market design** (capacity mechanisms must be open to providers in all MS and the price paid for capacity must be determined in a competitive process, not through an administrative procedure).
- **Clear rules** on deployment of strategic reserves (not used to keep prices low, not reinforce the position of incumbents).

Wholesale market

Topic 4 – Integration of balancing markets

Issue:

- Insufficient competition on the EU balancing market (due to long-term contracts, lack of integration of balancing markets).

Solution:

- **Harmonization of rules** for balance responsibility and imbalance settlement to ensure a level playing field among Balance Responsible Parties;
- **Non-discriminatory regulation** concerning cross-border balancing (more integration / facilitation of cross-border balancing service);
- More **short-term scheduling** of cross-border transmission capacity.

Retail market

Topic 6 – Retail and consumers

Issue:

- No level playing field in retail markets and insufficient access of new entrants in the energy market, such as aggregators, hinders competition;
- Question on who obtains access to smart-meter data can have effects on competitiveness of new entrants;
- Hurdles for consumers to switch energy supplier, competition within retail market;

Solution:

- **Non-discriminatory regulation** concerning new entrants (e.g. non-discriminatory access to smart meter data next to consumer protection regulations);
- **Consumer protection regulations** to remove hurdles to switch energy suppliers and increase confidence.

Consumption and decentral generation

Topic 7 – Energy poverty

Issue:

- Some MS instruments to combat energy poverty can have competition effects, such as state control of or a cap on electricity retail prices or social energy tariffs.

Solution:

- Explicitly account for impacts on competition when designing energy poverty measures.

Consumption and decentral generation

Topic 8 – Consumer activation

Issue:

- Level playing field for different kinds of consumer participation, such as energy cooperatives, prosumers and micro-grids, while ensuring sufficient consumer protection;

Solution:

- **Non-discriminatory regulation** concerning prosumers and energy cooperatives (e.g. regarding the ability to choose the energy supplier to sell the generated energy to, avoiding captive ‘prosumers’);
- Regarding the regulation of (private) micro-grids: find a balance between **consumer protection** and **sufficient incentives** for micro-grids.

Total value chain

Topic 5 – Level of competition between energy suppliers

Issue:

- Competition between energy suppliers on both the wholesale and the retail market is affected by the topics discussed before, but also, classically, by the market structure (number of suppliers and concentration);
- Market power has negative consequences for consumers.

Solution:

- **Consumer protection regulation** and **merger control** can ensure sufficient competition levels on different energy markets.
- Ensure barriers to entry are appropriate and proportional;
- **Antitrust** measures to curb misuse of market power (see recent Gazprom case).

Total value chain

Topic 9 – General issues

Issue:

- What are the general guidelines or scenarios when public aid is beneficial for competition?

To be answered after an in-depth analysis of the pervious topics.

Conclusion / Questions

Preliminary conclusions

- Issues which might potentially have negative competition effects within the Internal Energy Market can be solved by appropriate, i.e. competition-conform market design. They can hence be solved by energy market and consumer protection regulations, for instance.
- The contribution of competition law in solving the topics discussed is most prominent in cases such as:
 - Enforcement of **State aid** regulations with respect to (e.g.) national renewable energy stimulation mechanisms and capacity market design;
 - The role of **merger control and antitrust** regarding the level of competition between energy suppliers.

Questions for discussion

1. When it comes to capacity mechanisms, many different forms exist. How can it be ensured that the incentives of the competitive process are optimally used?
2. Given the decline in energy prices and the increases in e.g. taxes and other costs, how can it be ensured that retail market competition remains attractive?
3. What is the appropriate balance between ex post intervention and ex ante regulation? When should competition law instruments be preferred?
4. What is the appropriate balance between national and EU energy policies?