Specialist Certification in EU Energy Law

Competition Law in the Energy Sector

Competition Law in the energy sector is a specialised area that blends the general principles of EU antitrust rules with the particular characteristics of electricity, gas, oil and renewable markets. For students pursuing the Specialist Certification in EU Energy Law, mastering the key terminology is essential, as these concepts form the basis for analysing cases, drafting legal arguments and advising clients. The following guide presents the most important terms, explains their meaning, illustrates practical applications, and highlights the challenges that practitioners frequently encounter.

Market definition and structure

The first analytical step in any competition investigation is to define the relevant market. This involves two sub-components: The product market and the geographic market.

Product market – The set of goods or services that are regarded as interchangeable by consumers because they satisfy the same need or function. In the energy sector, product markets can be narrow (e.G., "Retail electricity supply") or broad (e.G., "Energy generation").

Geographic market – The area in which the conditions of competition are sufficiently homogeneous to allow firms to compete on an equal footing. For electricity, the geographic market may be limited to a national transmission system, a regional market (e.G., The Nordic area) or, in the case of cross-border trade, the whole EU.

Key concepts used to delimit markets include the SSNIP test (significant and sustained increase in price) and the hypothetical monopolist test. Practitioners must assess demand elasticity, the existence of substitutes (e.G., Gas versus electricity for heating), and barriers to entry such as the need for large capital investment.

Market power – The ability of a firm to act independently of competitors, customers or suppliers. In the energy sector, market power often stems from control over essential infrastructure (e.G., Transmission grids) or from a dominant position in a downstream market (e.G., Retail supply).

Abuse of dominance

When a firm holds a dominant position, EU law prohibits the exercise of that position in a way that harms competition. The key terminology includes:

Dominant position – A firm is considered dominant when it enjoys a share of the relevant market that is "substantially" higher than that of its rivals and when barriers prevent effective competition. In EU cases, a market share above 40-50 % is often taken as a prima facie indication of dominance, but the assessment also considers factors such as financial strength, access to essential facilities and the regulatory framework.

Abuse – Any conduct that is capable of distorting competition. The EU Treaty (Article 102 TFEU) lists several categories of abuse, of which the most relevant for the energy sector are:

- Exclusionary abuse – Practices that prevent rivals from entering or expanding in the market. Examples include refusal to grant access to transmission networks, discriminatory capacity allocation, and predatory pricing.
- Exploitative abuse – Practices that allow a dominant firm to extract higher prices or impose unfair conditions on customers. Typical cases involve unjustified price hikes, tying of services, or imposing unfair contract terms on small industrial users.
- Discriminatory pricing – Charging different prices for the same product or service without objective justification. In electricity, this could appear as a “price discrimination” between large industrial consumers and residential customers when the underlying cost base does not support the difference.

Practical example: In the European Commission’s 2019 decision against a major gas transmission operator, the dominant firm was found to have abused its position by imposing discriminatory access fees on third-party gas suppliers, effectively limiting competition in the wholesale market.

Cartels and collusive behaviour

A cartel is an agreement between competitors to coordinate their conduct, typically to fix prices, allocate markets or limit production. In the energy sector, cartels may arise in various stages of the value chain:

Price-fixing – Competitors agree on a common price for electricity or gas. Even informal “gentlemen’s agreements” can be sufficient to establish a cartel.

Market allocation – Companies divide the market geographically or by customer type, agreeing not to compete in each other’s assigned territories. In the EU, the Commission has fined several oil and gas companies for allocating markets across member states.

Bid-rigging – In procurement processes for large energy projects (e.G., Construction of power plants or pipelines), firms may collude to submit coordinated bids, ensuring that a predetermined winner is selected.

Enforcement tools include leniency programmes, which encourage participants to self-report in exchange for reduced fines. The EU’s Cartel Immunity Regulation has proven effective in uncovering collusion in the oil refining sector, where companies used covert communication channels to coordinate price increases.

State aid and subsidies

State aid refers to any advantage conferred by a public authority that could potentially distort competition. In the energy sector, the line between legitimate policy support (e.G., For renewable energy) and prohibited aid is often thin.

State aid definition – Under Article 107(1) TFEU, aid is considered “state aid” when it meets four criteria: (1) It is granted by the state or through state resources; (2) it confers an advantage; (3) it is selective; and (4) it affects trade between member states.

Compatibility criteria – The Commission can approve aid if it serves a legitimate objective (e.G., Environmental protection) and meets the "necessity" and "proportionality" tests. The "de minimis" rule allows small amounts of aid (up to €200 000 per undertaking per year) to be exempt.

Renewable energy support schemes – Feed-in tariffs, green certificates and auction mechanisms are common tools. They must be designed to avoid over-compensation, which could lead to market distortion. The Commission has examined several national schemes for compliance, focusing on the extent to which they favour domestic producers over cross-border competition.

Practical challenge: A member state introduced a subsidy for offshore wind projects that was granted only to domestic firms, with the condition that the electricity be sold exclusively in the national market. The Commission deemed this a breach of Article 107(1) because the aid was selective and restricted intra-EU trade.

Merger control

Mergers that significantly lessen competition are subject to EU merger control. The key terms include:

Concentration – A transaction that meets the EU thresholds (e.G., Combined worldwide turnover of €5 billion) triggers a mandatory review. In the energy sector, mergers often involve vertical integration (e.G., A generation company acquiring a transmission operator) or horizontal consolidation (e.G., Two gas distributors merging).

Horizontal merger – Combines firms that operate at the same level of the supply chain. The risk is reduced competition in the downstream market.

Vertical merger – Combines firms at different levels of the supply chain. While vertical integration can bring efficiency gains, it may also raise concerns about foreclosure of rivals from essential facilities.

Remedies – If the Commission finds a merger likely to impede competition, it may require divestitures, ring-fencing of assets, or behavioral commitments. For example, a major electricity producer's acquisition of a transmission operator was cleared on the condition that the network be operated on a "non-discriminatory basis" and that the merged entity provide third-party access to the grid.

Key procedural terms:

- Phase I review – A preliminary assessment conducted within 25 working days. If competition concerns are identified, the case proceeds to Phase II.
- Phase II investigation – A detailed analysis that may last up to 90 working days, during which the Commission can request additional information and conduct market tests.
- Commitments procedure – Allows parties to propose voluntary undertakings to address competition concerns, potentially avoiding a formal investigation.

Network regulation and essential facilities

Energy markets are heavily regulated because of the “natural monopoly” characteristics of transmission and distribution networks. The interplay between competition law and sectoral regulation creates a distinct vocabulary:

Essential facility – Infrastructure that is indispensable for market participants to provide a service (e.G., Electricity transmission lines). Under EU law, owners of essential facilities must provide access on “fair, reasonable and non-discriminatory” (FRAND) terms.

Regulated access – The process by which third parties obtain the right to use an essential facility. The European Network of Transmission System Operators for Electricity (ENTSO-E) and the European Network of Gas Transmission System Operators (ENTSOG) publish network codes that set out the technical and commercial rules for access.

Unbundling – The separation of network operations from generation or supply activities to prevent conflicts of interest. The EU’s “ownership unbundling” model requires the transmission operator to be a distinct legal entity with independent decision-making.

Third-party access (TPA) – The right of competitors to use the network under transparent conditions. TPA is a cornerstone of EU energy liberalisation, ensuring that new entrants can compete with incumbent suppliers.

Practical illustration: A gas transmission system operator that also owned a large gas storage facility was required by the Commission to divest the storage assets in order to comply with the unbundling rules, thereby preventing the operator from favouring its own downstream gas traders.

Relevant EU legislation and case law

A solid grasp of the terminology also requires familiarity with the principal legal sources:

- Article 101 TFEU – Prohibits agreements that restrict competition. In the energy sector, this article applies to coordination agreements between generators, to joint procurement of fuel, and to collaborative research projects that may have anti-competitive effects.
- Article 102 TFEU – Prohibits abuse of a dominant position. The case law includes landmark decisions such as EU Commission v. Microsoft (although not energy-specific, the principles on tying and refusal to supply are relevant to energy software providers) and Commission v. Gazprom, which dealt with market allocation in the gas sector.
- Regulation (EC) No 1/2003 – Provides the procedural framework for competition enforcement, including the powers of the Commission to conduct dawn-raids, request documents and impose fines.
- Regulation (EU) 2020/878 – The “Energy Union” regulation that integrates competition rules into the broader EU energy policy, emphasizing the need for market integration and the removal of barriers.
- Decision 2004/927/EC – The “State aid guidelines for the electricity and gas sectors” that set out the criteria for assessing the compatibility of aid measures.

Key case law examples:

1. Commission v. German Electricity Grid (E.ON) – The Commission found that the operator's discriminatory capacity allocation constituted an abuse of dominance. 2. Italian Gas Companies (Eni, Snam, etc.) – The case involved a cartel that allocated the gas market among the parties, resulting in a €500 million fine. 3. Iberdrola – A merger between two Spanish electricity generators was cleared after the parties offered commitments to ensure transparent access to the transmission network.

Economic concepts applied in competition analysis

Competition law relies heavily on economic tools. Understanding the following terms is vital for interpreting the Commission's reasoning:

Elasticity of demand – Measures how quantity demanded responds to price changes. In energy markets, demand is often price-inelastic in the short run (e.G., Residential electricity consumption) but more elastic in the long run as consumers can switch fuels or invest in efficiency.

Market concentration index (HHI) – The Herfindahl-Hirschman Index quantifies market concentration. An HHI above 2 500 indicates a highly concentrated market; a merger that raises the HHI by more than 200 points often triggers a deeper investigation.

Price-cost margin (PCM) – The difference between price and marginal cost, expressed as a percentage of price. High PCM values can signal market power, especially when combined with barriers to entry.

Marginal cost pricing – The principle that prices should reflect the cost of producing an additional unit of output. In regulated transmission, tariffs are often set on a marginal cost basis to avoid cross-subsidisation.

Vertical restraints – Conditions imposed by a supplier on downstream buyers (e.G., Exclusive dealing, resale price maintenance). The "vertical block exemption" (Regulation 330/2010) provides safe harbours for certain vertical agreements, provided they meet the market share thresholds.

Practical challenge: Assessing PCM in the electricity market requires accurate data on generation costs, which can be obscured by subsidies for renewable sources. Analysts must therefore adjust the cost base to reflect the true economic cost of production.

Enforcement instruments

The Commission employs a range of tools to enforce competition law in the energy sector:

Fines – Penalties can reach up to 10 % of a company's worldwide turnover. In the energy sector, fines have been levied for abuse of dominance (e.G., Discriminatory access) and for cartel participation.

Cease-and-desist orders – Require the undertaking to stop illegal conduct immediately. The Commission can also order the modification of contracts, the termination of agreements, or the provision of access on FRAND terms.

Damages actions – Private parties can sue for compensation under Article 101(2) and Article 102(2) TFEU.

The “C-478/07 Courage v. Crehan” case established that damages can be awarded for loss of profit caused by anti-competitive conduct.

Commitments – As mentioned, parties may voluntarily adopt measures to address competition concerns. Commitments are binding and enforceable; failure to comply can result in fines.

Challenges specific to the energy sector

While the core concepts of competition law are universal, the energy sector presents distinctive difficulties:

1. **Complex regulatory overlay** – Energy markets are subject to sector-specific regulations (e.G., The EU Electricity Directive, Gas Directive). Practitioners must navigate the interaction between competition rules and these directives, ensuring that compliance with one does not inadvertently breach the other.

2. **Data confidentiality** – Access to detailed cost and demand data is often restricted for commercial reasons. This limits the ability of competition authorities to conduct precise economic analyses, sometimes leading to reliance on indirect evidence.

3. **Cross-border interdependence** – Electricity and gas networks are interconnected across borders. A practice that appears anti-competitive domestically may have different implications when considered in the context of the EU internal market. For example, a capacity allocation rule that favours domestic producers may distort competition in neighbouring countries.

4. **Technological change** – The rise of renewables, battery storage and demand-response platforms introduces new market participants and novel business models. Existing competition law frameworks may struggle to accommodate these innovations, creating uncertainty for both regulators and market actors.

5. **State involvement** – Many energy assets remain publicly owned, and governments frequently intervene to support strategic objectives (e.G., Energy security). Distinguishing legitimate policy measures from prohibited state aid requires careful legal analysis.

Illustrative scenario: A national utility, majority-owned by the state, operates a large offshore wind farm and also controls a significant share of the domestic electricity retail market. The Commission must assess whether the utility’s pricing strategy for its own wind electricity constitutes an abuse of dominance, while also determining whether any subsidies it receives qualify as permissible state aid. This multi-layered analysis exemplifies the intricate balancing act required in the sector.

Key procedural terms for practitioners

When representing clients before the Commission, lawyers must be familiar with the procedural vocabulary that governs competition investigations:

Statement of objections – Issued by the Commission at the start of a Phase II investigation, outlining the alleged infringements and the evidence supporting them.

Letter of formal notice – The first step in a cartel investigation, informing the parties that the Commission has opened an inquiry and setting out the rights and obligations of the respondents.

Damages claim – A private party files a claim in a national court seeking compensation for losses caused by anti-competitive conduct. The claim must be based on factual and legal grounds, and the court may refer questions to the Court of Justice of the European Union (CJEU) for preliminary rulings.

Preliminary ruling – A request from a national court to the CJEU for an interpretation of EU law. In competition matters, preliminary rulings are common when national courts need clarification on the scope of Article 101 or Article 102.

Appeal – Decisions of the Commission can be appealed to the General Court, and subsequently to the CJEU on points of law. The appeal process can extend for several years, emphasizing the importance of robust initial defence strategies.

Practical tip: When preparing a defence in a cartel case, it is advantageous to cooperate early with the Commission, providing full documentation and, where appropriate, seeking leniency. The Commission's leniency guidelines stress that "promptness" and "full cooperation" are crucial determinants of the reduction in fine.

Interaction with national competition authorities (NCAs)

Although the EU Commission holds exclusive competence for cases that meet the EU thresholds, many investigations are first launched by NCAs. Understanding the terminology used by NCAs helps coordinate cross-border enforcement:

De-minimis threshold – The maximum turnover for which a case does not fall under EU jurisdiction. NCAs apply national thresholds, which are often lower than the EU threshold, allowing them to pursue smaller firms.

Co-ordination procedure – When an NCA identifies a case that also meets EU criteria, it notifies the Commission, which may take over the investigation. The "European Competition Network" (ECN) facilitates information exchange among authorities.

Sector-specific guidelines – NCAs may issue their own guidelines on competition in the energy sector, complementing EU guidance. For example, the French Autorité de la concurrence has published a "Guide on the application of competition law to the electricity market".

Practical example: An Italian NCA opened an investigation into alleged price-fixing among regional gas distributors. After determining that the firms' combined turnover exceeded the EU threshold, the NCA referred the case to the Commission, which subsequently imposed a €300 million fine.

Key terms in EU energy policy that intersect with competition law

In addition to the core competition vocabulary, certain policy-driven concepts frequently intersect with

antitrust analysis:

Energy Union – The EU strategy aimed at ensuring secure, sustainable, competitive, and affordable energy. The Energy Union emphasises market integration, which aligns with competition objectives.

Renewable energy targets – The EU's binding targets for renewable electricity and heating. Compliance mechanisms (e.G., Auctions) must be designed to avoid anti-competitive distortions.

Carbon pricing – The EU Emissions Trading System (ETS) creates a market for carbon allowances. Interaction with competition law arises when firms collude to manipulate allowance prices or when state aid is used to subsidise carbon-intensive activities.

Strategic reserves – The EU mandates that member states maintain strategic gas reserves. The operation of these reserves must be transparent to avoid market manipulation.

Smart grids – Advanced digital infrastructure that enables two-way communication and dynamic pricing. Competition law concerns include data access, interoperability standards and the potential for dominant firms to lock in customers.

Challenges in applying competition law to emerging technologies

The energy sector is undergoing rapid digital transformation. New terminologies are emerging, and practitioners must adapt:

Platform neutrality – The principle that digital platforms (e.G., Energy marketplaces) should treat all participants equally. Failure to ensure neutrality may constitute a form of discrimination under Article 102.

Data exclusivity – When a firm possesses exclusive access to high-quality consumption data, it may gain a competitive edge. Competition authorities are beginning to assess whether data exclusivity creates barriers to entry.

Algorithmic pricing – The use of automated pricing algorithms can lead to "parallel conduct" that mimics collusion. The Commission is developing guidance on how to distinguish legitimate price optimisation from unlawful coordination.

Practical scenario: A major electricity retailer deploys an AI-driven price-setting tool that automatically aligns its rates with those of its main competitor. Regulators must determine whether the algorithm constitutes tacit collusion, requiring a detailed analysis of the communication channels, the degree of price similarity, and the presence of "conscious parallelism".

Key terms in merger assessment specific to energy

Energy mergers often involve unique considerations, reflected in specialized terminology:

Vertical integration relief – When a merger combines a generation company with a transmission operator, the Commission may grant "vertical integration relief" if the combined entity can demonstrate that

integration leads to efficiency gains outweighing the competition concerns.

Counterfactual analysis – A method used to assess the likely market structure in the absence of the merger. In energy, this involves modelling generation capacity, demand forecasts and potential entry of new players.

Congestion pricing – In electricity markets, congestion pricing reflects the cost of transmitting electricity over constrained network sections. A merger that affects congestion pricing must be examined for its impact on market outcomes.

Ancillary services – Services that support the reliable operation of the power system (e.G., Frequency regulation, reserve provision). Mergers may affect the provision of ancillary services, raising competition concerns if the merged entity can limit supply.

Illustrative example: A gas transmission operator proposed to acquire a downstream gas retailer. The Commission required the parties to commit to "ring-fencing" the retail business, ensuring that the retailer's customers could continue to source gas from alternative suppliers under transparent terms.

Regulatory exemptions and safe harbours

EU competition law includes certain exemptions that are particularly relevant for energy markets:

Article 101(3) exemption – Allows agreements that improve the production or distribution of a product, provided they do not eliminate competition and allow consumers a fair share of the resulting benefits. In the energy sector, joint ventures for developing new grid infrastructure often rely on this exemption.

Block exemption regulation (BER) for vertical agreements – Regulation 330/2010 provides a safe harbour for vertical agreements meeting specific market-share thresholds (dominant parties below 30 % market share, non-dominant parties below 10 %). Energy firms often structure contracts to fall within this safe harbour.

De-minimis notice – The Commission's notice states that agreements with a market share below 10 % are unlikely to have appreciable anticompetitive effects. This is useful for small energy traders entering into short-term supply contracts.

Practical tip: When drafting a cooperation agreement for joint research on smart-grid technologies, ensure that the agreement contains a "competition clause" that limits the scope of information exchange to non-sensitive data, thereby increasing the likelihood of qualifying for the Article 101(3) exemption.

Key terms related to cross-border electricity trading

Cross-border electricity trade is essential for the EU's integrated market. Specific terminology includes:

Capacity allocation – The process by which transmission capacity for cross-border flows is allocated to market participants, usually through auctions. Discriminatory allocation can constitute an abuse of dominance.

Congestion management – Measures taken when transmission capacity is insufficient to meet demand. The

EU's "Congestion Management Procedure" sets out transparent rules for managing such situations.

Balancing market – A market where participants submit bids to balance supply and demand in real time. The design of balancing markets must avoid discriminatory treatment of participants.

Flow-based market coupling – A method that coordinates cross-border capacity allocation based on actual network flows rather than fixed capacity, enhancing efficiency. The Commission monitors the implementation to ensure that it does not disadvantage smaller traders.

Illustrative case: A transmission system operator was found to have allocated cross-border capacity preferentially to its own affiliated retailer, leading to a fine for abuse of dominance. The decision highlighted the importance of transparent allocation rules under the flow-based coupling mechanism.

Key terms related to gas markets

Gas markets have distinct features, reflected in specialized vocabulary:

Wholesale gas market – The market where large volumes of gas are bought and sold, often via contracts for difference, take-or-pay arrangements, or spot trading.

Supply point – The physical location where gas is delivered to a customer. Access to supply points is a critical bottleneck; the Commission requires non-discriminatory access.

Balancing services – Services that ensure the continuity of gas supply, including pressure regulation and storage injection/withdrawal. Dominant firms may exploit control over balancing services to foreclose competition.

Capacity reservation – The practice of reserving a portion of pipeline capacity for future use. The EU's "Capacity Allocation Framework" aims to prevent anti-competitive reservation practices.

Practical example: A pipeline operator reserved capacity for its own affiliated gas trader, limiting the ability of independent traders to secure transport. The Commission intervened, requiring the operator to adopt a transparent "first-come, first-served" allocation rule.

Key terms in renewable energy support schemes

Renewable energy policies intersect with competition law through various mechanisms:

Feed-in tariff (FIT) – A guaranteed price paid to renewable generators for each unit of electricity produced. FITs must be designed to avoid over-compensation that could distort competition.

Renewable energy certificates (RECs) – Tradable certificates that represent the environmental attributes of renewable electricity. The market for RECs must be open and non-discriminatory.

Auction mechanism – Competitive bidding processes used to allocate support for renewable projects. Auctions must be transparent and free from collusive behaviour among bidders.

Contract for Difference (CfD) – A mechanism whereby renewable generators receive a fixed “strike price” and are compensated for the difference between the market price and the strike price. The design of CfDs must ensure that they do not give undue advantage to domestic producers.

Illustrative scenario: A member state introduced a CfD scheme that automatically awarded the highest strike price to projects located within its borders, without opening the process to cross-border competition. The Commission deemed the scheme incompatible with Article 107, as it was selective and restricted the internal market.

Key terms in electricity market design

Modern electricity markets rely on sophisticated designs that incorporate competition principles:

Day-ahead market – A market where electricity is traded one day before delivery, based on forecasts of demand and supply. The day-ahead market must be open to all qualified participants.

Intraday market – A market that allows participants to adjust positions after the day-ahead auction, providing flexibility for unexpected changes in demand or generation.

Capacity market – A mechanism that ensures sufficient generation capacity to meet peak demand. Capacity markets can raise competition concerns if they favour incumbent generators.

Locational marginal pricing (LMP) – Prices that reflect the cost of delivering electricity to specific locations, taking into account transmission constraints. LMPs must be calculated transparently to avoid price manipulation.

Practical note: When a national regulator introduced a capacity market that awarded contracts only to existing large generators, the Commission examined whether the scheme constituted a “state aid” that distorted competition, ultimately requiring the regulator to open the capacity market to new entrants.

Key terms for enforcement actions

Enforcement actions are accompanied by a set of technical terms that practitioners need to master:

Fine calculation – The Commission calculates fines based on the “gravity” of the infringement, the “duration” of the illegal conduct, and the “turnover” of the offending firms. In the energy sector, the high turnover of utilities can result in substantial penalties.

Periodic penalty – When an infringement is ongoing, the Commission may impose a periodic fine, payable regularly until compliance is achieved.

Compliance monitoring – After an enforcement decision, the Commission may appoint a “monitor” to oversee the implementation of remedies, especially in complex sectors like energy.

Commitment decision – The final decision that accepts the undertakings offered by the parties. The decision includes a “binding timetable” for implementation.

Practical illustration: Following an abuse of dominance case involving discriminatory access to a gas transmission network, the Commission imposed a €200 million fine and required the operator to adopt a compliance programme monitored by an independent auditor for a period of three years.

Emerging issues: Decarbonisation, hydrogen and competition

The EU's ambition to achieve climate neutrality by 2050 introduces new market segments, notably hydrogen. Competition law will play a pivotal role in shaping these emerging markets.

Hydrogen market – The EU is developing a "hydrogen strategy" that includes infrastructure development, production subsidies and cross-border trade. Competition concerns centre on the risk of "green-hydrogen" subsidies crowding out "grey-hydrogen" producers, potentially leading to market distortion.

Infrastructure bottlenecks – The construction of hydrogen pipelines and storage facilities may create "essential facilities" that need to be opened on FRAND terms.

State aid for hydrogen – The Commission has issued guidelines on "state aid for the production of renewable gases", emphasizing the need for "transparent, non-discriminatory allocation of support".

Practical challenge: Companies seeking to invest in hydrogen production must design their business models to comply with both the EU's climate objectives and competition law, ensuring that any public support does not confer an unjustified advantage over rivals.

Key terms for litigation and judicial review

When a case reaches the courts, a specific set of terms becomes relevant:

Preliminary reference – A request made by a national court to the CJEU for an interpretation of EU law. This is a common tool when national courts confront ambiguous competition-law provisions.

Direct effect – The principle that EU law provisions can be invoked directly before national courts. Articles 101 and 102 have direct effect, allowing parties to claim damages or seek injunctive relief.

Damages regime – The legal framework governing compensation for losses caused by antitrust violations. The "Courage" case established that damages can be awarded for "loss of profit" resulting from the infringement.

Statute of limitations – The period within which a claim for damages must be brought. In competition law, the limitation period is generally five years from the date the infringement ceased, but the "relevant period" may be extended for ongoing effects.

Illustrative example: A small electricity retailer sued a dominant transmission operator for discriminatory capacity allocation, claiming loss of profit. The national court referred a preliminary question to the CJEU concerning the interpretation of "essential facilities" under Article 102, leading to a binding ruling that clarified the scope of the obligation to provide non-discriminatory access.

Key terms in competition advocacy and policy

Beyond enforcement, competition law influences policy formation. Practitioners should be familiar with advocacy terminology:

Competition Impact Assessment (CIA) – An analysis required under the Energy Union framework to evaluate the competition effects of proposed policy measures.

Stakeholder consultation – The Commission's process of gathering views from industry participants, consumer groups and NGOs before adopting regulations that may affect competition.

Regulatory impact analysis (RIA) – A broader assessment that examines economic, social and environmental impacts of proposed legislation, including competition implications.

Policy brief – A concise document prepared by experts to inform policymakers about competition concerns related to a specific energy initiative (e.G., A proposal to create a European strategic gas reserve).

Practical tip: When drafting a CIA for a new cross-border electricity interconnector, include a detailed analysis of potential "gatekeeper" effects, the need for transparent capacity allocation, and the risk of "vertical foreclosure" for downstream suppliers.

Key terms in cross-border cooperation and joint ventures

Joint ventures are common in the energy sector, especially for large infrastructure projects. The relevant terms include:

Joint venture (JV) – A contractual arrangement where two or more parties pool resources to achieve a specific objective, often involving shared ownership of assets.

Co-ownership – The legal arrangement where multiple parties own a share of an asset (e.G., A transmission line). Co-ownership must comply with competition rules if it leads to coordinated behaviour.

Horizontal JV exemption – Under Article 101(3), a JV that improves production or distribution may be exempt if it does not eliminate competition. The exemption requires a thorough "efficiency test".

Vertical JV – A JV that combines activities at different levels of the supply chain (e.G., A generator and a grid operator). Vertical JVs are evaluated under the "vertical block exemption" to determine if they fall within safe harbours.

Illustrative scenario: Two national transmission operators formed a JV to build a cross-border interconnector. The Commission assessed the JV under the Article 101(3) exemption, confirming that the project generated "significant efficiencies" and did not restrict competition, leading to approval.

Key terms in digital platforms for energy trading

Digital platforms are reshaping how energy is bought and sold. Competition analysis must address specific

concepts:

Marketplace platform – An online venue where multiple sellers offer electricity or gas to buyers. Platforms must ensure “non-discriminatory access” to avoid favouritism.

Data sharing obligations – The requirement that platform operators provide competitors with access to essential data (e.G., Demand forecasts) on fair terms.

Algorithmic collusion – A risk where pricing algorithms unintentionally converge on similar prices, creating a “parallel conduct” scenario. The Commission is developing guidance on how to detect and assess such conduct.

Network effects – The phenomenon where the value of a platform increases as more participants join. Strong network effects can create “winner-takes-all” dynamics, raising competition concerns.

Practical illustration: An energy trading platform introduced a rule that gave priority access to its own affiliated generators. The Commission investigated the rule as a potential abuse of dominance, focusing on whether the platform’s control over the market constituted an “essential facility”.

Key terms for compliance programmes

Energy companies often implement internal compliance measures to prevent violations. Familiarity with the following terms helps in designing effective programmes:

Compliance officer – A senior manager responsible for overseeing adherence to competition law, often reporting directly to the board.

Risk assessment – The systematic identification and evaluation of potential competition-law risks, such as price-fixing or improper access arrangements.

Training modules – Structured courses provided to employees, covering topics like “acceptable communication with competitors” and “handling of confidential information”.

Whistle-blowing mechanism – An internal channel that allows staff to report suspected infringements anonymously.

Practical tip: A large electricity retailer instituted a “communication policy” that prohibited any informal discussions about pricing with competitors, thereby reducing the risk of “concerted practice” allegations under Article 101.

Key terms in cross-border dispute resolution

Given the multinational nature of EU energy markets, disputes often arise between parties from different member states. The following terms are pertinent:

Arbitration clause – A contractual provision that requires disputes to be resolved through arbitration rather

than national courts. In energy contracts, arbitration is often preferred for its speed and expertise.

European Energy Court (proposed) – A concept under discussion to create a specialised EU court for energy disputes, which would integrate competition considerations.

Choice-of-law clause – Determines which jurisdiction's law governs the contract. Parties must ensure that the chosen law does not conflict with EU competition rules.

Enforcement of arbitral awards – EU regulations facilitate the recognition and enforcement of arbitral decisions across member states, providing a uniform framework for cross-border enforcement.

Illustrative example: Two gas traders from different member states entered into a long-term supply contract with an arbitration clause. When a dispute arose concerning alleged discriminatory capacity allocation, the arbitral tribunal applied EU competition law principles, reinforcing the primacy of EU rules over national law.