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The EC's Gazprom Investigation

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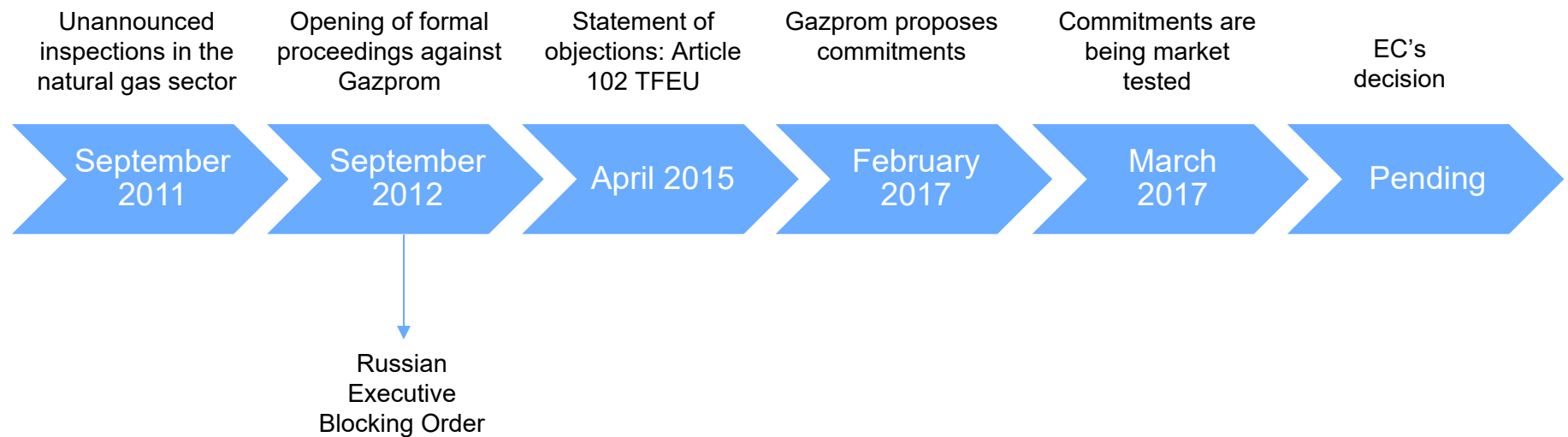
Competition Law In The Energy Sector

Vienna, December 4, 2017

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Timeline



Gazprom Investigation – High Publicity

Commission v. Gazprom: The antitrust clash of the decade?



EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 4 September 2010

Antitrust: Commission opens proceedings against Gazprom

The European Commission has opened formal proceedings to investigate whether Gazprom, the Russian gas producer and supplier of natural gas, might be hindering competition in Central and Eastern Europe.

Could Gazprom antitrust case redraw gas industry?
November 12, 2012 1:59 pm by Nick Butler



THE WALL STREET JOURNAL. | BUSINESS

EU Steps Up Scrutiny of Gazprom Commission Preparing Legal Proceedings Against Russian Energy Giant



EU Said to Review Gazprom Complaint Amid Ukraine Crisis

Mar 6, 2014 12:00 AM GMT+0100

February 7, 2014 3:01 pm

Gazprom faces EU antitrust charge threat

The EC's Statement of Objections



Charlemagne

The enforcer

Margrethe Vestager, the Danish competition commissioner, tests her mettle

May 2nd 2015 | From the print edition [Timekeeper](#) [Like](#) 231



Statement of Objections – Overview



Statement of Objections – Cross-border Gas Sales

Gazprom has included a number of territorial restrictions in its supply agreements with wholesalers preventing the export of gas in eight EU Member States (*Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia*). These clauses include:

- **export ban clauses** - provisions that explicitly prohibit the export of gas;
- **destination clauses** - provisions that stipulate that the customer (wholesaler or industrial customer) must use the purchased gas in its own country or can only sell it to certain customers within its country; and
- other measures that prevent the cross-border flow of gas, such as requesting wholesalers to **obtain Gazprom's approval for exports** or **refusing to change the location** to which the gas should be delivered under certain circumstances.

Statement of Objections – Gas Pricing

Generally, Gazprom pegs the price of the natural gas it sells to a number of oil products (so-called "oil indexation"). The Commission is investigating whether, and to what extent, the individual price levels in a country are unfair and how Gazprom's specific price formulae based on oil indexation have contributed to the unfairness.

On the basis of this analysis, the Commission has come to the preliminary conclusion in its Statement of Objections that the specific price formulae, as applied in Gazprom's contracts with its customers, have contributed to the unfairness of Gazprom's prices: Gazprom's specific price formulae which link the price of gas to the price of oil products seem to have largely favoured Gazprom over its customers.

The Commission's preliminary conclusion, as outlined in the Statement of Objections, is that Gazprom has charged unfair prices in five Central and Eastern European countries (*Bulgaria, Estonia, Latvia, Lithuania and Poland*).

Statement of Objections – Gas Transport Infrastructure

In Bulgaria, the Commission's preliminary view is that Gazprom made wholesale gas supplies conditional upon the participation of the Bulgarian gas incumbent wholesaler in a large-scale infrastructure project of Gazprom (the South Stream pipeline project) despite high costs and an uncertain economic outlook.

In Poland, the Commission's preliminary view is that Gazprom made gas supplies conditional upon maintaining Gazprom's control over investment decisions concerning one of Poland's key transit pipelines (Yamal). This pipeline is one of the main infrastructures that could allow gas from suppliers – other than Gazprom – to enter the Polish market.

Gazprom's Commitments Proposal

Proposals for Commitments
COMP/39.816 – Gazprom
COMMITMENTS UNDER ARTICLE 9 OF
COUNCIL REGULATION N°1/2003

- (1) The commitments offered by PJSC Gazprom and Gazprom Export LLC (hereinafter "**Gazprom**" as defined below) (hereinafter "**Commitments**") aim at responding to the European Commission's (hereinafter "**Commission**") competition concerns.
- (2) Gazprom offers these Commitments in consideration that according to Article 9 of Council Regulation (EC) N°1/2003, the Commission shall confirm that there are no longer grounds for action by the Commission, without concluding whether or not there has been or still is an infringement under Article 102 TFEU and under Article 54 of the EEA Agreement. This proposal of Commitments therefore does not constitute an acknowledgement that Article 102 TFEU or Article 54 of the EEA Agreement or indeed any other substantive rule of EU competition law has been breached.

Proposed Commitments – Overview



Commitments – Cross-border Gas Sales

Gazprom has committed to remove **all contractual barriers to the free flow of gas** in Central and Eastern European gas markets. In addition, it has committed to **take active steps to enable their better integration**:

- *Remove market segmentation* -Gazprom will remove all direct and indirect contractual restrictions that prevent its customers from re-selling gas they have bought across borders, or make it economically less attractive for customers to do so. This means that in addition to removing restrictions on gas re-sale (e.g. export bans, destination clauses), Gazprom will remove all clauses which reduce its customers' business incentives to re-sell gas (e.g. where Gazprom would get a share of the profit from re-selling). Gazprom will also not to reintroduce such clauses in the future.
- *Facilitate market interconnections with Bulgaria* – The provisions in Gazprom's contracts on the monitoring and metering of gas in Bulgaria have isolated the Bulgarian gas market from the neighbouring EU gas markets. Gazprom has committed to make changes to the relevant contracts. This will put the Bulgarian operator of the gas transmission infrastructure in control of the cross-border flows of gas and facilitate interconnection agreements between Bulgaria and its EU neighbours, in particular with Greece.
- *Create opportunities for more gas flows to the Baltic States and Bulgaria* – If customers want to re-sell gas across borders, they need access to gas infrastructure in order to ship the gas. Bulgaria and the Baltic States currently lack access to such interconnections with their EU neighbours. Gazprom has committed to give relevant customers in Hungary, Poland and Slovakia the possibility to ask for delivery of all or part of their contracted gas to entry points into the Baltic States and Bulgaria. This would enable customers to seek new business opportunities in the Baltic States and Bulgaria, even before the connecting gas infrastructure becomes available. Gazprom would be allowed to charge a fixed and transparent service fee, in line with what it would typically charge for such services in the market.

Commitments – Gas Transport Infrastructure

Finally, the Commission has concerns that Gazprom leveraged its dominant market position on the gas supply market **to obtain advantages relating to access to or control of gas infrastructure**. The Statement of Objections raised concerns in relation to the South Stream project in Bulgaria and the Yamal pipeline in Poland.

- *Removes Gazprom's demands* - As regards South Stream, Gazprom has committed not to seek any damages from its Bulgarian partners following the termination of the South Stream project. This is without prejudice to whether such claims would have been valid in the first place.

Commitments – Pricing

The Commission has been concerned that the territorial restrictions have allowed Gazprom to carve up the market, as a result of which it may have been able to pursue an **excessive pricing policy** in five Member States (*Bulgaria, Estonia, Latvia, Lithuania and Poland*).

Gazprom has committed to introduce a number of important changes to its contractual price revision clauses to ensure **competitive gas prices** in these gas markets:

- *Gas prices linked to competitive benchmarks*: Gazprom will introduce competitive benchmarks, including Western European hub prices, into its price review clauses in contracts with customers in the five Member States. Price review clauses enable customers to request changes to their gas price. The commitments will give the customers an explicit contractual right to trigger a price review when the prices they pay diverge from competitive price benchmarks. This would ensure competitive gas prices in these regions in the future.
- *More frequent and efficient price reviews*: Gazprom will increase the frequency and speed of price revisions. For those contracts, for instance in the Baltic States, where price revision clauses do not currently exist, Gazprom will introduce clauses reflecting the above elements.

Development of Oil Price (2014 – 2017)



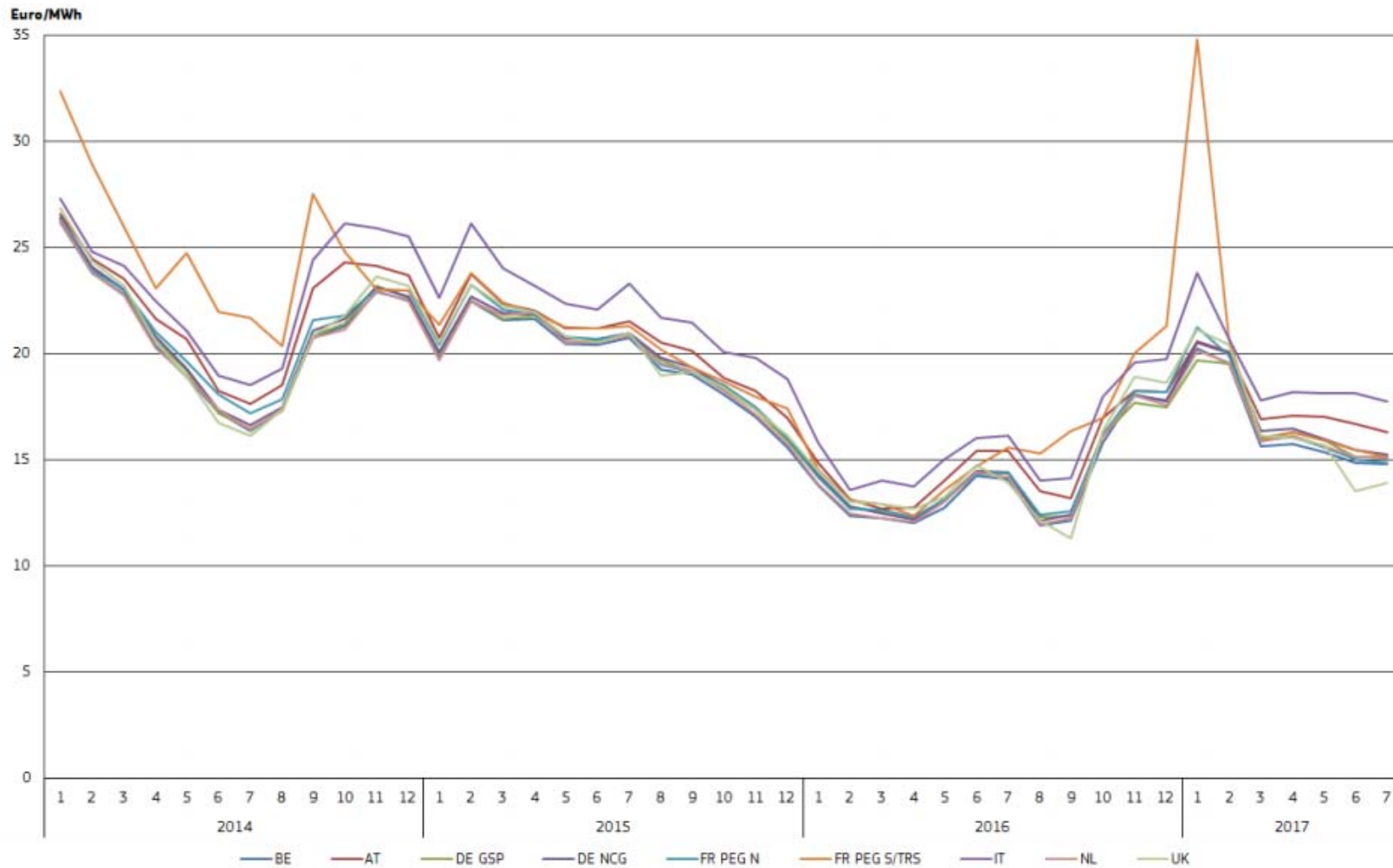
Source: Brent Crude Oil Prices Per Barrel (Daily close)

Development of Oil Price (2010 – 2017)



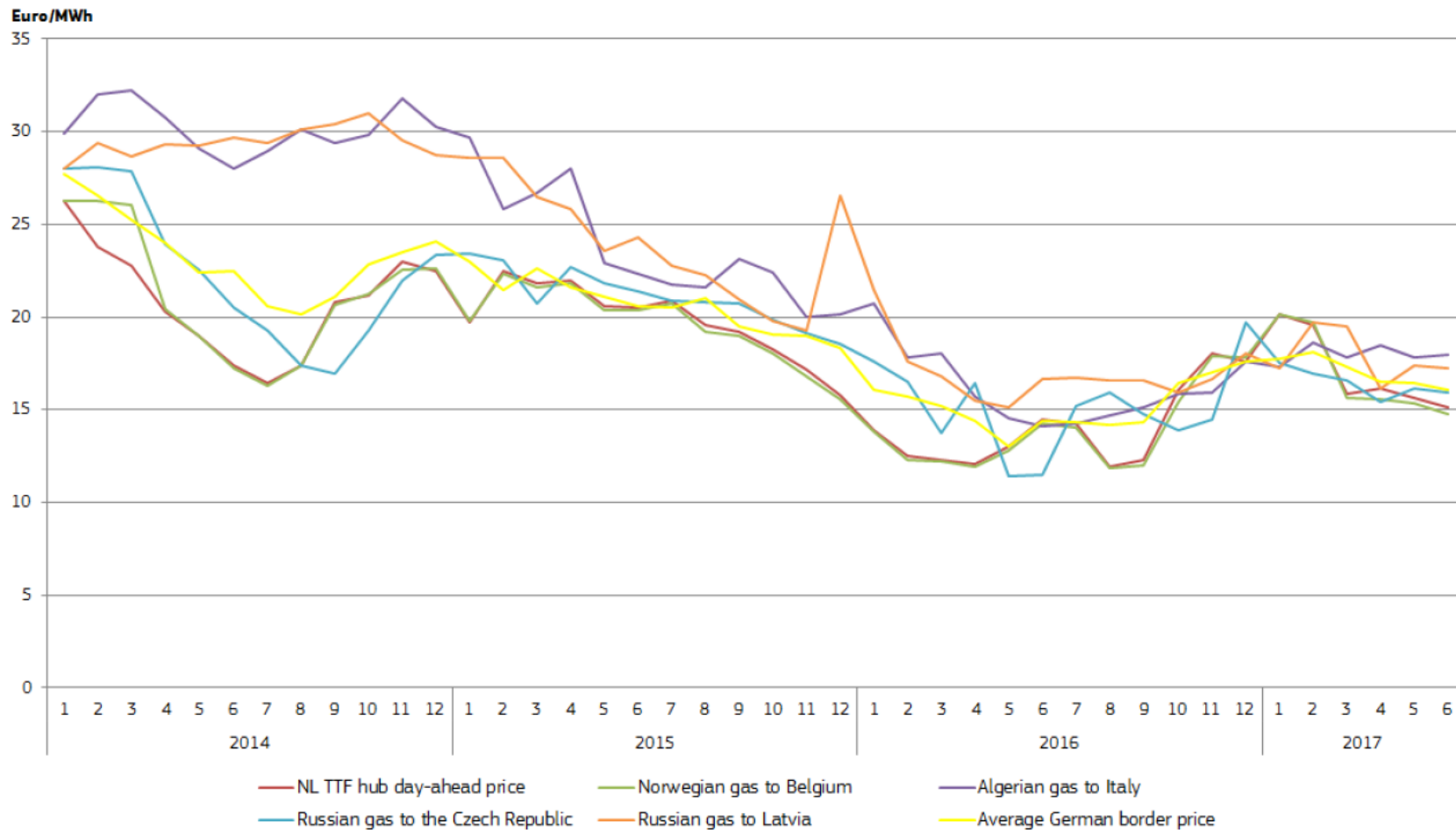
Source: Brent Crude Oil Prices Per Barrel (Daily close)

Development of EU Gas Hub Pricing (2014 – 2017)



Source: DG Energy Q2 Report on European Gas Markets (Sourcing Platts)

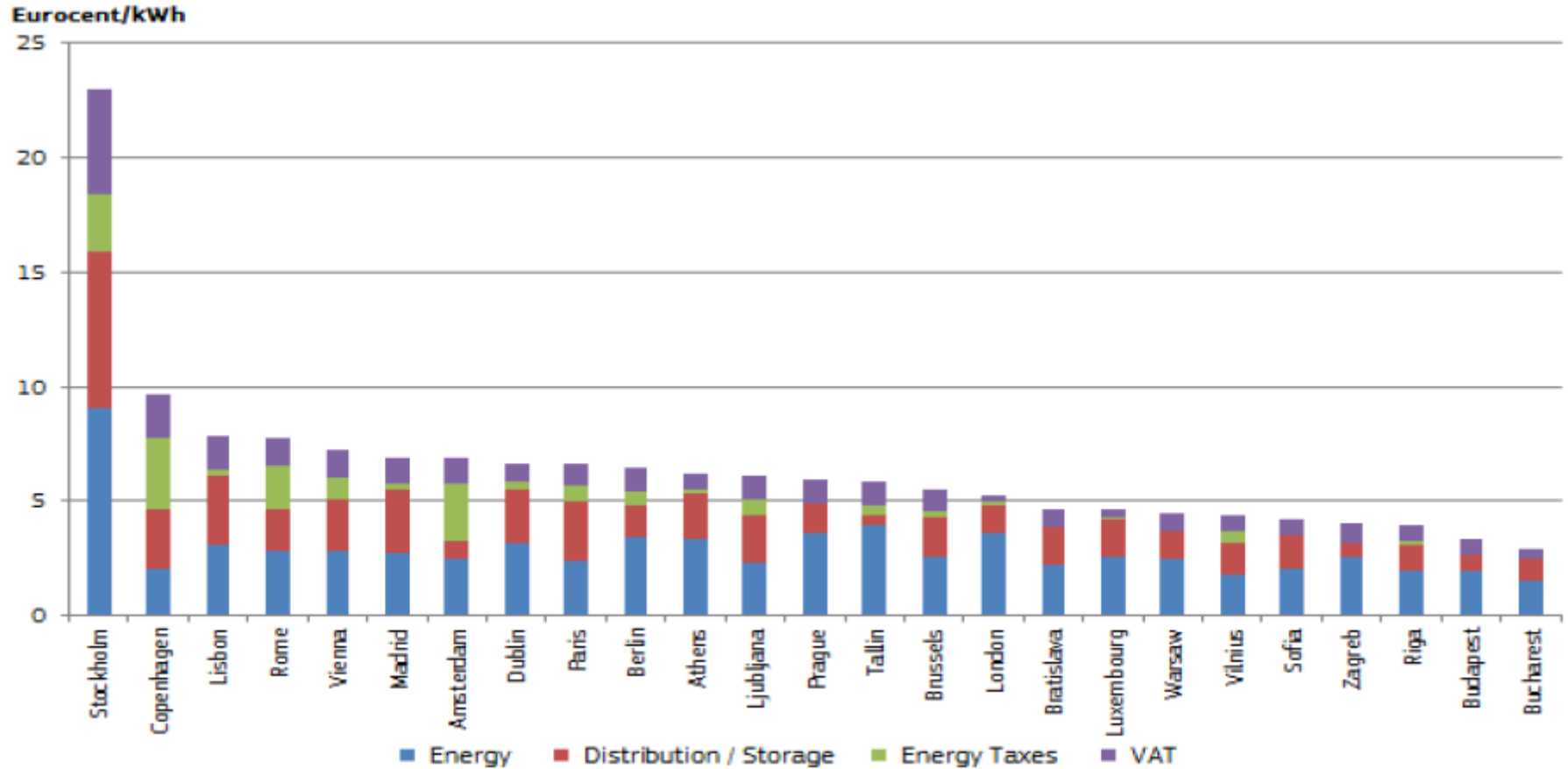
Development of EU Gas LTC Prices (2014-2017)



Source: Eurostat COMEXT and European Commission estimations, BAFA, Platts

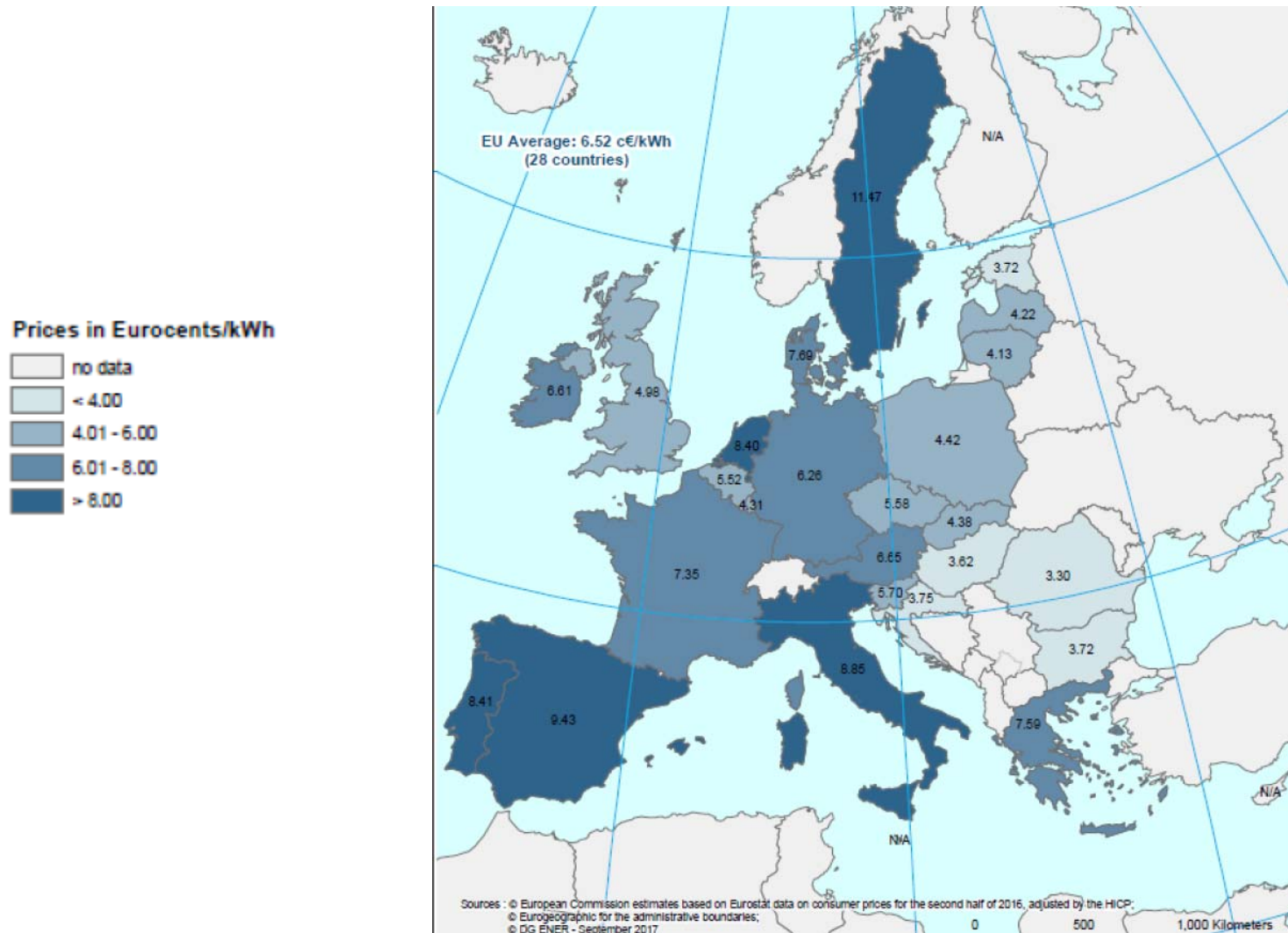
Source: DG Energy Q2 Report on European Gas Markets

Consumer Gas Price By City (June 2017)



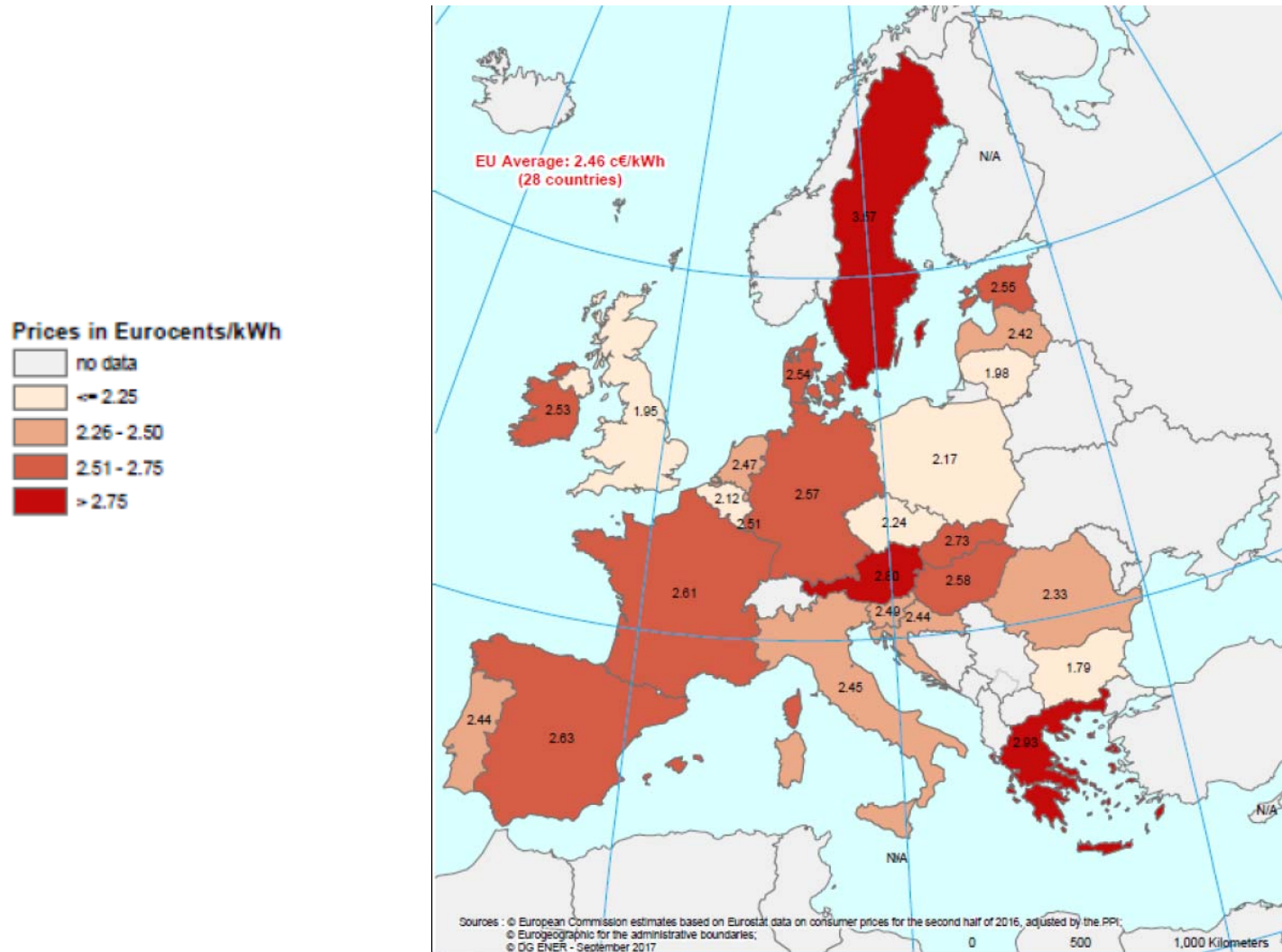
Source: DG Energy Q2 Report on European Gas Markets (Sourcing VaasaETT)

Q2 2017 Domestic Consumer Gas Prices



Source: DG Energy Q2 Report on European Gas Markets

Q2 2017 Industrial Customer Gas Prices



Source: DG Energy Q2 Report on European Gas Markets

EU Excessive Pricing Case Law – Few Precedents



ECJ preliminary rulings

Sirena (Case 40/70)

Deutsche Grammophon
(Case 78/70)

Sacem II (Case 402/85)

Renault (Case 53/87)

Bodson (Case 30/87)

Tournier (Case 395/87)

Sacem III (Joined cases
110/88, 241/88, 242/88)

Ahmed Saeed (Case 30/87)

AKKA/LAA (Case C-177/16)

ECJ judgments

General Motors
(Case 26/75)

United Brands
(Case 27/76)

British Leyland
(Case 226/84)

Commission decisions

ITT Promedia (IV/35.268)

Deutsche Post (COMP/36.915)

Scandlines (COMP/36.568)

Ryanair (COMP/39.886)

Case Law – Substantial Price Differential

- To support a finding of abuse, price differential should be substantial:



Case	Price differential
<i>General Motors</i>	100 - 300% (Commission decision annulled)
<i>United Brands</i>	Up to and over 100% (Commission decision annulled)
<i>British Leyland</i>	500% (Commission decision upheld)
<i>Sirena, Deutsche Grammophon, Sacem III</i>	“ particularly high ” (preliminary reference cases)



Case	Price differential
<i>ITT Promedia</i>	900% (settled)
<i>Deutsche Post</i>	above 500% (no appeal)
<i>Scandlines</i>	360% (complaint rejected)



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