

EU Internal Energy Market Policy

New Dynamics in the Brussels Policy Game?

a CANES Working Paper

Per Ove Eikeland



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Abstract

The paper analyses the September 2007 European Commission proposal for a third internal energy policy package. It asks if the proposal reflected fundamental changes in the Brussels policy game from 2003, when the existing legislation had been adopted. A multi-level governance approach has inspired this check of alternative propositions. We find that the proposal was primarily the result of greater will on the part of the Commission to pressure unwilling member-state governments. There is also strong evidence that the Commission pursued a new form of multi-level game, pressing non-state agents directly to change the political game at the national level. Our study finally discusses whether different network approaches would add explanatory power to our study, acknowledging that agents working in larger networks could have greater thrust on the Commission. The main conclusion is that EU policy networks have become less stable and more issue-specific, making policy predictions less certain than before.

Key Words

EU politics, energy policy, liberalisation, policy networks, multi-level governance

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CANES (Climate change Altering Nordic Energy Systems) is a Norwegian-Swedish research project in which Nordic research institutions cooperate with some of the most prominent players in the energy sector to find answers to the following question:

How are the Nordic energy markets and infrastructure affected by existing and future climate policies on EU and national levels?

The Fridtjof Nansen Institute (FNI) is the co-ordinator of this 2007-2010 project. The research tasks are conducted by FNI in collaboration with the Stockholm Environment Institute (SEI) and Lund Institute of Technology. Energibedriftenes Landsforening (the Norwegian Electricity Industry Association), Norsk Industri (the Federation of Norwegian Industries), Statnett, Statkraft, Svenska Kraftnät and Vattenfall are industrial partners in the project.

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1 Introduction

This paper analyses the September 2007 European Commission (hereafter the Commission) proposal for a third internal energy policy package.¹ The package aimed at removing barriers left to competition and trade in energy within the European Community. It marked a major step forward from the second package adopted in 2003, in turn succeeding the first package adopted in the 1990s. While the 2003 package had mandated the member states to set up regulatory agencies, the 2007 package asked for their independency from the government and industry. The 2003 package arranged for *voluntary* harmonisation of rules and practices preventing trade across member states, while the new package proposed to set up an EU-level agency with the powers to *mandate* such harmonisation. Also a range of other provisions signalled a strong will to remove internal energy market barriers.

Nothing illustrated this will more than the proposal to mandate national transmission system operators to sell off their network business – so-called *ownership unbundling*. This specific provision responded to indices that vertically integrated companies misused their ownership of networks to give own supply business better terms of access than their competitors. It marked a major step forward from the 2003 legislation that had only required the organisational separation of production/supply and network activities – so-called *legal unbundling*.

To be sure, mandatory ownership unbundling was discussed also back in 2003, but major opposition from member states and companies made the Commission decide not to include it in the second package. The decision to include it this time therefore represents a change that is interesting to study. It is all the more puzzling since the European Energy Council at their meeting three months ahead of the launch of the new proposal showed that a blocking minority of member states was against ‘ownership unbundling’.

Our study asks *if the new Commission proposal reflected that fundamental changes had taken place in the Brussels policy game in the period 2003-2007, making the Commission expect that a political momentum after all existed for more radical internal energy market policies.*

The Energy Council vote indicated as an isolated event that member state fundamentals had not changed. We thus ask *if the more radical flavour of the proposal, compared to that adopted in 2003, reflected a stronger independent will of the Commission to press forward internal energy market liberalisation?*

After all, the *Commission* has the exclusive right to formulate new EU policy proposals, and the proposal could reflect that the Commission pushed hard to achieve at least some internal energy market policy progress in its negotiations with the European Council (hereafter: the Council).

Alternatively, the decision could reflect that *other* fundamentals of the game had changed, which the Commission expected could eventually tip the Council majority in its final vote on the proposal.

Our analysis of the Brussels policy game thus takes a broader approach than just analysing the relative influence of Member States vs. the Commission. We embark on a journey aimed at disentangling the EU policy-making system into various groups of stakeholders and their capabilities to influence EU policy formulation, informed by the *multilevel governance* perspective. This approach includes stakeholders operating at different levels, within the member states, at the EU-level and in arenas outside the EU, possibly causing the Commission to act as it did.

The European Parliament (hereafter: the Parliament) will certainly be addressed as important EU-level co-decider with the Council in internal market policies, and *we ask whether the Commission had greater support of the Parliament for more radical liberalisation than what was the case back in 2003.*

Despite the Energy Council lack of endorsement of ownership unbundling in June 2007, member state governments were clearly split on the issue, with a great number of them already ‘in compliance’ with ‘ownership unbundling’ and other parts of the proposal. And, even within the recalcitrant member states, groups of stakeholders opted for more radical market access provisions, making the policy field fluid and characterised by high uncertainty. Hence, *we ask to whether the Commission after all expected that important member state governments would shift position and tip the Council towards backing of the proposal.*

This brings us over to *non-state actors* in the Brussels policy game – engaged in lobbying both national governments and EU-level institutions. A change in position by influential interest groups could well be one such factor convincing member state governments to change position.

We also address the influence of such groups *directly* on the Commission. Among potential non-state stakeholders, we expect energy market agents – energy consumers and energy suppliers – to have been the key lobby groups, given their direct material interests at stake in internal energy market development. We expect energy consumers to have a general strong interest in ‘ownership unbundling’, as this will increase their opportunities of unrestricted supply from producers offering better energy contracts. We expect energy suppliers, on the other hand, to have less homogeneous interests. Vertically integrated suppliers could have an interest in resisting ‘ownership unbundling’ to maintain their strategic advantage of controlling the grid. Already ‘ownership unbundled’ production companies, on the other hand, could be expected to support mandatory unbundling to level out their competitive disadvantages. Also companies specialised in energy trade could be expected to opt for radical market access provisions.

We thus ask if energy consumer lobbying groups had in fact gathered a higher insider status with the Commission compared to energy supplier

lobbying groups compared to the situation back in 2003. Alternatively, we ask if energy supplier lobbying groups had taken a more positive position on radical measures to ensure grid independency, compared to that taken in 2003.

Finally, our study seeks to identify ‘outside the EU’-factors’ possibly influencing the Commission decision. With security of supply gaining prominence in EU energy policy the past years, triggered by events outside EU-control and fortified by the Union’s vulnerability to outside suppliers due a high rate of imports in the supply mix, *we ask whether and how such EU-external factors affected the Commission proposal*

Having first disentangled the Brussels game into specific groups of actors and their influence on the Commission proposal, our study next investigates more specifically the use of *policy networks* as a tool for gaining such influence. We discuss whether networks were tangible in the process and had changed character in the period 2003-2007, as a potential explanatory mechanism linking specific agents to the outcome investigated. Acknowledging conclusions from earlier *policy network* studies that EU policy-makers, and in particularly the Commission in preparatory stages of new policy proposals, often engages closely with lobby groups representing large and broad constituencies and with sufficient resources to provide expert advice, we ask *whether groups supporting the internal energy market idea had become more numerous and more closely aligned than before when approaching the Commission, at the cost of groups supporting ‘national’ solutions in EU energy policy.*

Acknowledging that the proposal was nested within a greater debate between agents holding different ‘beliefs’ about whether a competitive internal energy market is the most appropriate solution to larger environmental and security of supply challenges, or if specific national and non-market solutions would better serve such goals, our policy network study looks beyond narrow strategic self-interests as motivation for collective action and include also ‘struggle of ideas’ in the framework. We ask *whether the decision to extend competition in fact reflected changes in the relative power of coalitions of agents advocating such alternative belief systems.*

Section 2 presents our analytical framework in greater detail and spell out the research questions as propositions. Section 3 provides a brief contextual background for the Commission proposal. It tracks the basic elements of the first and second policy packages adopted in the 1990s and 2003, revealing also the major lines of disagreement between stakeholders. Empirical investigation and the multi-level governance-inspired analysis of the relative influence on the proposal by different stakeholders are carried out in section 4. Section 5 provides an extra advocacy-coalition-inspired analysis of deeper policy beliefs held by different agents and whether changes in these add explanatory power to the analysis. Section 6 provides a short conclusion and discussion of expectations for future internal energy market policy development.

2 Analytical Framework and Theoretical Propositions

2.1 Theoretical Approaches Disentangling the Role of Specific Groups of Agents in the Brussels Policy Game

Different approaches portray differently the EU decision-making system and the powers of its agents to influence the formation of policies. The *intergovernmental* framework views EU policy development as the product of the interests of sovereign member state governments, and the majority coalition of these within the European Council (Moravcsik, 1993:478-80). The approach certainly finds support in the *long-term* history of EU internal energy market policy, with the numerous examples of member state governments staggering an integration-ambitious European Commission. From this approach, we can put up a simple proposition:

The Commission third energy liberalization package proposal was formulated based on the influence of member states, and reflected that member states constituting a majority of the votes in the Council had signalled that they opted for new more radical provisions in the internal energy market policies of the European Union.

Acknowledging that policy processes are dynamic, a less strict intergovernmentalism-derived proposition would be:

The Commission had information that a majority of member states would eventually support the proposal.

On the background that the proposal reflected a major step forward from 2003, the corresponding proposition would be:

The Commission expected more member states to support radical unbundling this time than what had been the case back in 2003.

Supranational institutionalism provides a different view on the power relations between agents in the Brussels policy game. Compared to intergovernmentalism, it portrays the Commission in more autonomous terms, able to utilise the significant gaps in member states' control over the process of European integration in day-to-day policy making (Pierson, 1998; Marks et al. 1996; Borrás, 2007). The approach built on the work of integration-optimistic *neo-institutional* scholars who expected EU institutions to gradually gain power at the cost of member state governments due to *positive spillover* effects from integration in other sectors; *the establishment of European institutions* sponsoring further integration; and to which *interest groups would turn their allegiance* (Haas, 1958; Lindberg, 1963, 1966; Schmitter, 1970). Also this approach would interpret well specific stages and events in the history of internal energy market policy-making. The Commission acted strongly as an independent agent when formulating the first proposal creating an internal energy market, eager to expand the scope of their policy competencies to another sector. It was supported by major energy-consuming industries pinpoint-

ing that for the 1987 Single Market Act, which liberalised commodity trade in the Community, to have full effect, also energy as a salient input factor should undergo liberalisation and harmonisation across member states (Matlary, 1993; Andersen, 2000; Eikeland, 2004).

A simple proposition based on this supranational institutionalism would be:

The Commission acted independently from member state influence when launching the proposal.

Catching the dynamics in policy observed from 2003, a corresponding proposition would be:

Commission-internal factors had changed from 2003, making the Commission more strongly focused on completing the internal energy market project.

The past decades have seen many studies portraying a far *broader* set of stakeholders as premise-providers for EU policy development. *Multilevel governance scholars* depicts EU policy making as *a system of continuous negotiations among nested governments at several territorial tiers and supranational, national, regional, and local governments are enmeshed in territorially overarching policy networks* (Marks, 1993: 392).

Originally applied for the study of policy implementation, the approach was extended to cover the policy-making phase as well (Marks, Hooghe, and Blank, 1996). While accepting the central role of the Council of Ministers in EU decision making, multilevel governance scholars pointed at a number of constraints on the ability of individual governments to control the outcomes of collective decision making in supranational institutions; the use of qualified majority voting in the Council; a culture in the Council working against frequent use of the veto option; and the nation state not being a unified actor (Marks, Hooghe, and Blank, 1996; Bache and George, 2006:34). The latter entailed that national interests would be defined via a pluralistic domestic process whereby sections of the government, and non-state actors could form alliances with their counterparts in other member states, in turn influencing national governments' negotiating positions on EU matters (Bache and George, 2006:34). These alliances would not be under control of the core institutions of the central national government, and the Commission in particular would be able to exploit the existence of these 'transgovernmental' and 'transnational' networks of actors to promote their policy preferences within the 'domestic' politics of member states (Bache and George, 2006:35).

To sum up, the multilevel governance approach drew up a far more complex picture of agents capable of influencing EU policy development, including non-state actors engaged in transnational alliances with governmental and other non-governmental agents. Studies have mapped the extensive system of non-state actors and their transnational alliances in EU policy making – typically industrial firms and their Euro Federations but also alliances of public interest organizations, organizations of experts and epistemic communities (Bache and George, 2006: 335).

Particular focus has been given to European-level *organisations*, each representing a transnational network of national companies or public interest organisations, and in turn often units in larger networks and coalitions formed in Brussels politics (Kirchner, 1977:28; Butt Philip, 1985:1). Mc Laughlin and Jordan (1993: 155) found that the growth in membership and power of such Euro Federations stemmed from individual companies' perceptions that the Commission would take Euro-federations as the definite witnesses of the industries' viewpoints. Kirchner (1980: 132) found that many individual companies perceived the European level as more pertinent for lobbying their interests than the national level, another factor keeping such networks going and expanding. Yet other studies indicate, however, that lobbying Brussels institutions has not come at the cost of continued efforts at influencing member state governments – the latter being 'lobbied lobbyists' in EU policy-making (Mazey and Richardson, 2001; Spence, 1993: 48).

A separate literature discusses conditions for lobbyists to be influential in EU policy development. Provision of expert knowledge as barter of influence has been noted as particularly important when lobbying the European Commission (Bouwen, 2002: 382; Greenwood, 1997:4). Bouwen (2002:382) found that all-European business sector associations had access to such expert knowledge and were often first when the Commission granted access to advisory committees and sent out drafts of directives to comment on. Also Greenwood (1997:4) concluded that business group associations had superior access since they were viewed as having a more representative opinion than individual firms (Greenwood, 1997:4). Greenwood (1997:18-20) identified other important resources for such business networks, however, among them the ability to organise the interests of members into a non-competitive format; a coherent organisation with representative outlets able to make decisions with ease and alacrity; and the ability of a group to influence its network of individual members.

The comprehensiveness of the multilevel governance approach makes it futile at the outset to specify clear propositions about what agents were decisive for the formulations made by the Commission in its third liberalisation policy package proposal. Determining factors could rest within different layers of governance and with different agents. Set up against the narrower intergovernmental perspective, however, the approach acknowledges a potential important role for *non-state agents*, able to influence EU policy development through different venues for lobbying; the national governments and EU institutions directly. We thus formulate the proposition:

The Commission proposal reflected changes in the configuration of non-state agents influencing the Commission.

As discussed above, the key groups of non-state actors with stakes in EU internal energy market policy are energy consumers and energy suppliers, with their corresponding Euro-federations engaged in lobbying EU institutions. Since energy consumers represented the group with the highest uniformity of interests tied to open infrastructure access (potentially gaining from improvement of competitive conditions), we propose more specifically:

The Commission proposal reflected greater clout by major energy consumers to influence the Commission at the cost of energy suppliers, compared to the situation in 2003.

The multilevel governance perspective on EU policy-making has been criticized for ignoring how the international level interacts with the EU and national levels (Jordan, 2001). Skjærseth & Wettstad (2008) therefore included EU-external factors in their study of the come-into-being of the EU emission trading system. As noted in the introduction, there is reason to believe that EU-external forces might have played a greater role in the 2007 process than what it did back in 2003, notably factors fuelling member state and EU institutions fear for the security of supply. While security of supply was already placed on the EU agenda before 2003, a series of events has since this tilted the issue to the very top of priorities to be dealt with, to mention only the growth of China and India as competitors for the world's energy resources; the continued instability in the Middle East; and Russia's interferences with neighbouring countries with energy supply at stake in the disputes. It is also a fact that the extension of member states in 2004 caused European Union import dependencies to rise substantially.

Hence, we hypothesise that the radical proposal of the Commission came in response to these EU-externally generated fears for EU security of supply, increasing since the second liberalisation package was adopted in 2003.

2.2 Theoretical Approaches Entangling Agents in Networks

The multilevel governance approach has been criticised also for not providing a theory with predictive power, reflecting that the perspective is essentially a description of the nature of the EU (Jordan, 2001; Bache and George, 2006). A potential way forward could be to specify more distinct explanatory mechanisms linking the agents at different levels to the EU policy investigated.

Richardson (1996) advocated the application of the *policy network* concept to assist building explanatory frameworks for EU policy development, originally developed in studies of public policy making in the United States and later Britain (Rhodes, 1981; 1988; Bache and George, 2006). The policy network concept has been defined as a *relatively stable set* of mainly public and private corporate actors with linkages serving as channels for communication and for the exchange of information, expertise, trust and other policy resources (Kenis and Schneider, 1987; 1991). While elite persons are the unit of many policy network studies, Laumann and Knoke (1987) viewed organizations as the fundamental unit in their definition of a policy network: 'A set of interest group organizations, legislative institutions, and governmental executive agencies that engage in setting agendas, formulating policies, gaining access, advocating positions, organizing collective influence actions, and selecting among proposals to solve delimited substantive policy problems'.

The explanatory power of the policy network approach rests much in comparative and dynamic logic, in the sense that the ability (resources) of

agents within one network to influence policy must be seen in relation with competing agents' abilities to form, maintain and expand networks.

The *policy networks* approach is used widely in studies of EU policy making, viewed as particularly applicable to the study of the policy-staging stage, given the Commission's openness to lobbying (see e.g. Peterson, 1992; Hull, 1993; Bache, George and Rhodes, 1996; Mazey and Richardson, 2001). In this early stage of the policy process, the EU Commission depends on information and advice to ensure that policies proposed will actually be viewed as legitimate and stand the better chance of being adopted and actually implemented. The Commission often takes initiative on its own to establish networks of stakeholders by inviting them to various expert and consultation committees, typically constituted by representatives from different Commission services, national civil servants and private actors – responding to an often under-resourced Commission dependent on stable relationships with partners whom it could trust and who has information that it could use (Peterson, 1995).

The applicability of the policy network has been questioned on the reason that EU processes were seen as too unsettled enough for policy networks to emerge (Kassim, 1994). This critique has been countered, however, by studies indicating that the Commission is particularly open to lobbying, compared with even the most pluralistic member states (Mazey and Richardson, 2001). Hence, while many studies show that networking is part of the daily life of EU decision-making, some studies still question the *stability* of such networks. Richardson (2000:1008) as an example, states that 'Policy making within European states and at the European Union level is much more fluid and unpredictable – and less controllable – than seems to be implied by enthusiasts of the network approach. Whilst there are undoubtedly policy communities and networks which exhibit both stability and exclusiveness and do control policy agendas, there appear to be counter-tendencies which lead to lack of control, policy instability, and unpredictable outcomes'. A similar shift from policy-making based on tightly knit policy communities and well-structured and stable networks, to a more loosely organized' and therefore less predictable collection of stakeholders in 'issue networks' was noted in the USA as early as the 1970s (Hecl, 1978:94; Richardson, 2000:1008).

Various network approaches hold that agents forming such collective action structures tend to be motivated not only by 'strategic self-interests' but also the spreading of softer norms, values and ideas (Bache and George, 2006:37). Typical is the *advocacy coalition framework*, viewing political outcomes as the result of negotiations between agents holding differential understandings of political problems and appropriate actions (Sabatier 1988, 1998; Sabatier and Jenkins-Smith, 1993, 1999; Sabatier and Weible, 2007).

The framework presumes cognitively constrained individuals tending to ignore information that challenge their beliefs and readily accept information that bolsters their beliefs, seeking to gain influence over policy development through engagement in collective action with agents sharing similar beliefs (Sabatier and McLaughlin 1988; Scholz and Pinney 1995; Weible, C. M., 2006).²

According to Sabatier and Jenkins-Smith (1999:119), such advocacy coalitions would span wider than administrative agencies, legislative committees, and interest groups at a single level of government – to include also journalists, researchers and policy analysts, who play important roles in the generation, dissemination, and evaluation of policy ideas, as well as actors at all levels of government active in policy formulation and implementation.

The belief systems of competitive coalitions are viewed as multi-layered, with the *deep core* including basic ontological and normative beliefs, such as the relative valuation of individual freedom versus social equality, in line with the left/right scale used to analyse political behaviour. These deep core beliefs often constrain beliefs at other layers.

At the next level are *policy core beliefs*, the coalition's basic normative commitments and causal perceptions across a policy domain or subsystem – the energy policy domain as an example. These include fundamental value priorities, such as the relative importance of economic development versus environmental protection, basic perceptions concerning the general seriousness of the problem and its principal causes, and strategies for realizing core values within the subsystem, such as the appropriate division of authority between governments and markets, the level of government best suited to deal with the problem, and the basic policy instruments to be used.

Yet a final layer, *secondary aspects* of a coalition's belief system, comprises a large set of beliefs that apply to specific agents and locales within the greater policy domain (Sabatier and Jenkins-Smith, 1999:122).

While core beliefs are very resistant to change, policy core beliefs are less rigidly held, open to change by learning over time. A typical example is how US environmental groups gradually changed preferences from command-and-control regulations to economic incentives in situations where the marginal costs of environmental improvements are very high (Sabatier and Jenkins-Smith, 1999; Liroff, 1986).

Acknowledging that the Commission September 2007 proposal was nested with a greater January 2007 climate and energy package of proposals to deal with the public good issues of climate protection and security of supply, *we ask whether the decision reflected more long-term change in policy-core beliefs among stakeholders, towards greater support of the neo-liberal market-approach to energy supply as the best solution to attain the greater public policy goals of environmental protection and security of supply.*

Internal energy market policies were ideationally inspired by public policy reforms that swept the world in the 1990s, initiated by the US and British governments in the 1980s, often conceptualized as 'New Public Management Reforms'. Inspired by the same set of economic theories and normative set of values placing economic efficiency/budget control in the front seat, the reforms focused on structural devolution, competition, management principles and increased use of contracts (Self, P., 2000). They aimed to enhance the responsiveness of government, to

make scarce public resources go further, to adopt best practices from private sector successes and to refocus the powers and capacities of government on achievable, targeted outcomes (Painter, M., 2000:209). They often included the down-scaling of governmental direct involvement, financing, control and co-ordination of societal tasks and services.

These ideas and the energy sector reforms inspired by them – instalment of competitive markets and trade, structural change to ensure competition, and regulatory reforms to ensure that policy instruments applied to secure greater public goods – were received with different degrees of enthusiasm among member state governments and other stakeholders in the European Union. A division line developing was between stakeholders supporting the view that a competitive energy market and market-compatible policy instruments would best serve the attainment of public service goals tied to environmental restructuring and security of supply. The extremist view of this paradigm held that an energy market left on its own will attain such goals in the most efficient way without government interventions whatsoever, since consumers will eventually demand products produced under environmental and security of supply considerations. At the other extremist point, one finds stakeholders that denounced the entire idea that market forces could or should be applied to attain greater public service goals. As the ideas spread, most stakeholders took on different middle positions, endorsing a market solution combined with the need for government intervention to correct for market failures.

With such ‘policy belief systems’ still living side by side in Europe, we expect the decision to take liberalisation a new step forward to have evoked stakeholder responses explicitly to the attainment of such greater energy policy goals. Our analysis thus tracks the extent to which such deeper ‘policy-core beliefs’ were part of stakeholder positions on ‘ownership unbundling’. We also record whether changes had taken place from back in 2003 in different stakeholder group perceptions on the compatibility of a free-competition energy market and greater public service goals. Adding up groups with different perceptions, we discuss the relevance of the *advocacy coalition framework* for our stakeholder analysis, and to what extent the decision of the Commission was brought about by changes in such coalitions.

Summing up then, this paper discusses the relevance of a network approach as *complementary* to a multilevel governance approach in explaining the ‘radicalisation’ in internal energy market policies represented by the Commission September 2007 third energy liberalisation package. While first disentangling the EU decision making system to account for influences by specific agents at different levels, we next discuss whether entangling them again in networks and advocacy coalitions would add explanatory power to our analysis.

Short on empirical grounding

The analysis of positions, perceptions and lobbying by different groups of stakeholders rests on different type of data sources and their triangulation: policy documents of the Commission, the Parliament and the Council; consultation documents given to the Commission from

various stakeholders throughout the process, publicly available on the Commission's website, and position papers available at stakeholder websites. To supplement the written data with 'first-hand information', a total of 14 interviews involving 17 stakeholders in Brussels energy policy. These spanned actors directly involved in the reform process, and with actors holding a broader knowledge on the various aspects of energy market liberalisation in the EU. Due to the sensitivity of some of the issues discussed, the interviewees are treated anonymously throughout the article, but an overview of their names and designations can be found in the article's appendix.

To account for shifts over time in positions, perceptions and role played by different agents in the formulation of internal energy market policies, additional secondary data sources have been extensively consulted, in academic journals, books and working papers, business and policy newsletters.

3 Background

It is now 20 years since the idea of a well-functioning internal energy market was first spelled out by a Commission policy paper. This paper envisioned a ‘common carrier’ system for gas and electricity across the member in which any consumer could purchase energy from any supplier across the Community, regardless of ownership of the intermediary grid structures (Commission of the European Communities, 1988).

The process of getting this first package of policies aimed at accomplishing this vision became thorny and lengthy. In 1990, the Council accepted a limited ‘common transit system’, allowing only national transmission system operators (TSOs) to purchase electricity and gas across the territory of another member state (Lyons, 1992:8). Only towards the end of the decade, after long deliberations with the Commission, and with active mediation from the European Parliament, the Council adopted the 1996 Electricity Directive and the 1998 Gas Directive. These directives entitled only a limited number of high volume gas and electricity consumers the right to freely shift suppliers. To ensure a *de facto* right for these consumers, the Commission sought to establish harmonised terms of access for ‘third parties’ to existing networks and gas pipelines.³

The directives gave no invariable instructions for how owners of power lines and gas grids should secure access for alternative suppliers, and the vertically integrated companies had every interest in obstructing such access to benefit its own power supply businesses. Member states were instructed to ensure that the transmission system operators kept separate accounts (unbundling of accounts) for activities subject to competition (production and supply) and those considered a natural monopoly (operation of transmission grids). No agreement was reached, however, on uniform rules for how TSOs should facilitate access by ‘third parties’. In the end, the directive merely listed different options: grid owners could list openly access terms, such as tariffs for using the grid and capacity of the grid (called a system of *regulated* third party access), leaving traders with information in advance of striking new deals. They could also choose the less transparent system of *negotiated* access (allowing the TSOs to negotiate separate deals with each eligible customer). The Commission also had to accept that member states could restrict trade across national borders, with a ‘single buyer’ system adopted, allowing a single national firm to retain full control over imports.

The gas and electricity directives instructed the Commission to report on the range of needs for harmonisation of national regulations to existing to trade and physical flow across national borders.⁴ Follow-up reports in 1999 on the Gas Directive and in 2000 on the Electricity Directive addressed these issues and concluded that great variation in transmission prices, congestion management systems and outright lack of cross-border transmission capacity across the member states restricted cross-country trade (Commission of the European Communities, 1999b; 2000b). Acknowledging the limited success of the top-down legislative approach applied for the electricity and gas directives, the Commission this time chose another strategy – to involve a broad range of stake-

holders in a bottom-up process to identify and seek consensus on the harmonisation of cross-border transmission system issues. Organising these processes, stakeholder forums (the Electricity Regulatory Forum of Florence – the Florence Forum and the Gas Regulatory Forum of Madrid) involved participation by national regulatory authorities, member state governments, the Commission, transmission system operators (TSOs), electricity traders, consumers, network users, and power exchanges.

While giving high priority to these bottom-up processes, the Commission also continued to push member states on implementation of the electricity and gas directives, with benchmarking reports used as a major new tool. A 2001 benchmarking report concluded that large asymmetries in implementation had jeopardised the process of creating a level playing field internal market in energy. While some member states had over-fulfilled their obligations under the directives, ensuring third party access through a system of full ownership separation of infrastructure and production/supply businesses (*ownership unbundling*), other countries appeared with systems seriously deterring consumers from changing suppliers in the market (Commission of the European Communities, 2001).⁵

The 2001 Gothenburg European Council Summit agreed on this diagnosis and asked the Commission to prepare a second energy liberalisation package. When adopted by the Council in June 2003, the new electricity and gas directives required full electricity and gas market opening for non-household consumers by July 2004 and for all consumers by July 2007 (European Parliament and the Council, 2003a, 2003b). To prevent discrimination by TSOs in transmission system access issues, the directives mandated organisational separation of units operating transmission activities from those operating generation and supply activities (*legal unbundling*). Full ownership unbundling had been proposed by different agents but the Commission failed to include it in the proposal due to great opposition by many member states.⁶

Additionally, the directives instructed member states to set up national regulatory agencies with well-defined functions and greater transparency was called for in that the directives mandated publication of network tariffs by the TSOs (regulated access) instead of case-by-case negotiations. A separate Regulation sought to strengthen the bottom-up processes by establishing a separate EU-level committee, the European Regulators' Group for Electricity and Gas (*ERGEG*), constituted by member state regulatory authorities, with the mandate to develop guidelines for harmonisation of technical and market factors constraining access to cross-border infrastructure and cross-border trade (such as rules for inter-TSO compensation, national transmission tariffs and on allocation of cross-border interconnection capacity (European Parliament and the Council, 2003c).

Despite of this new second package, energy consumers continued to voice dissatisfaction, allegedly experiencing higher tariff levels than before and discrimination in access to grids from vertically integrated companies.

In June 2005, the Commission launched gas and electricity sector inquiries, with a preliminary report adopted in 2006 concluding that flaws in access to energy infrastructure in many member states had caused unnecessary high energy prices in Europe and loss of welfare opportunities for European energy *consumers*. Vertically integrated energy producers had constrained competition through discrimination of others in the use of infrastructure and held back on new infrastructure investments, causing problems for independent producers of electricity and heat. This was also viewed as a barrier to producers of indigenous renewable energy and hence, to the alleviation of climate change and security of supply concerns in the European Union.

These new concerns made the Commission in March 2006 propose that a new energy strategy for Europe should be developed, aimed at creating greater coherence between the member states and consistency between policy measures dealing with the three primary objectives: competitive energy for European consumers, security of supply and environmental improvement of EU energy systems (Commission of the European Communities, 2006a). This was condoned by the European Council Spring Summit 2006.

January 2007, the Commission adopted the strategic energy review as part of an energy & climate package that also included the full energy sector inquiry (Commission of the European Communities, 2006b; 2007f). The package proposed new quantitative goals, tabling the so-called 20-20-20 goals, a 20% unilateral reduction of climate gas emissions by the EU, a 20% share for renewable sources and 20% reduction in energy use compared to 'business as usual' – all to be attained by 2020. The action plan proposed to achieve the larger energy and climate policy goals had listed further measures to ensure access to and investments in new infrastructure as top priorities.

The review concluded that European gas and electricity markets remained national in scope and had maintained from the pre-liberalisation period a high level of concentration and scope for exercising market power (Commission of the European Communities, 2007f). Lack of access to infrastructure was highlighted as a major barrier to free competition, causing, together with higher primary fuel costs and environmental obligations, significant rises in gas and electricity wholesale prices (Commission of the European Communities, 2006b).

The review elaborated in detail on vertical integration between network and supply interests as a mechanism causing negative repercussions for market entry and incentives to invest in networks, despite the existing legal unbundling provisions. Vertically integrated operators of the networks, (in gas, also storage and to liquid natural gas terminals) were suspected of favouring access to their own affiliates (discrimination). Operation and investment decisions had been made on the basis of own supply interests. Vertical integration of generation/import and supply activities had reduced incentives to trade on wholesale markets and thus, a lack of liquidity in these markets, in turn an entry barrier. The review also added insufficient or unavailable cross-border transmission capacity as a barrier to integration of national markets together with lack of transparency, reliability and timeliness of information on network availability (electricity interconnections and gas transit pipelines).

Based on this description, the Commission proposed to go forward with a *third legislative package*. The proposal included many different measures, with ‘ownership unbundling of network and production assets’ placed at the top. An alternative Independent System Operator (ISO) was proposed as a ‘fallback position’, the latter retaining joint ownership with returns on network operations regulated and operation, maintenance and development of networks would no longer be decided by the vertically integrated owner. The proposal also included measures to harmonize the levels of powers and independence of national energy regulators from industry and government on the basis of the highest, not the lowest, common denominator in the EU, stating that they should promote the internal energy market and not only effective development of national markets.

Furthermore, the Commission proposed to strengthen the EU-level regulatory function, stating that ERGEG had not provided the governance required for satisfactory progress in the work of getting standards facilitating cross-border trade harmonized across the member states. Instead of this *voluntary* co-operation approach, the Commission called for a new body at the EU-level with powers to adopt *binding* standards.

The Commission also proposed harmonized minimum standards for transparency of information given by TSOs and generators, to make it easier for new entrants to compete and to prevent price manipulation.

The proposal also included measures to beef up planning and approval of priority Trans-European gas and electricity networks; the set up of a new Office of the Energy Observatory to monitor the demand/supply balance in Europe; the development of an Energy Customers’ Charter to ensure Public Service Obligations; the set-up of a solidarity mechanism assisting member states particularly import dependent and vulnerable in the supply for oil, gas and electricity and other measures to improve the security of supply within the European Union.

The European Spring Council 2007 endorsed the integrated energy and climate package and the 20-20-20 percent goals set for energy efficiency, renewable energy and climate gas reductions in the European Union. They also consented to a third energy liberalisation package but failed to discuss the Commission proposals in any detail, asking the Commission to come up with more specific drafts for the Energy Council meeting in June 2007.

At this meeting, discussions showed that a blocking minority rejected full ownership unbundling as a mandatory measure, still acknowledging ‘the need for action on...unbundling of network operations from energy production and supply activities’.⁷ The Energy Council also rejected any EU-level arrangements that would interfere with member states exclusive right to decide on their energy mix, such as the idea of an EU Energy Observatory. Energy Commissioner Piebalgs, attending the meeting together with Neelie Kroes, the Competition Commissioner, admitted that the ‘majority of the countries did not support ‘ownership unbundling’ legislation’ and that the Commission would have a very difficult time ahead in putting together a new energy liberalization law.

German Economics Minister *Michael Glos*, the chair of the meeting, asked the Commission to take notice of the suggestions coming out of the meeting when elaborating its proposal for a third package for the internal market in electricity and gas.⁸ The Commission nevertheless did not abandon ‘ownership unbundling’ as the preferred mandated option in its 19 September 2007 proposal. To be sure, the ‘Independent System Operator’ was retained as a fallback-option. Another last minute ‘reciprocity clause’ was included, specifying that ownership unbundling would also apply for third country companies, aimed at preventing take-over of transmission systems by vertically integrated companies from outside the EU, with Commission powers to intervene in acquisition matters if a purchaser could not demonstrate ownership unbundling.

Other important parts of the proposal were: measures to ensure independence of national regulators through the set-up of agencies outside the control of national ministries and funded by market agents; enhancing EU-level regulatory capacity with a new Agency for Cooperation between National Energy Regulators (ACER) having binding decision powers; a new European Network for Transmission System Operators (EnTSO) to speed up the bottom-up process of developing common commercial/technical codes, security standards and to plan and coordinate infrastructure development, and new minimum requirements for transparency of network operations and supply.

In essence, all parts somehow related to an aim of creating equal access conditions to the European grid system and more trade and investments across national borders. The package asked for extended powers of the EU Commission to interfere in national grid access issues (by being more specific on organisational measures and less discretionary for the member states to how independent grid operations should be guaranteed). As such, it represented a radical leap in EU Commission *ambitions for creating true EU-level market integration*, compared to that achieved based on the second energy liberalisation package from 2003.

4 Analysis – Changes in the Brussels Internal Energy Market Policy Game

This section presents empirical evidence and analyse the relative role played by different agents in influencing Commission internal energy market policies, in 2007 and back in 2003, respectively. We first identify factors within the Commission that had changed from 2003, asking whether the proposal reflected a higher independent will of the Commission to press energy market liberalisation forward. Next, we discuss whether changes had appeared in the relative abilities of non-state agents to influence the Commission, asking whether the proposal reflected a shift in policy positions or relative thrust on the Commission of major energy consumer and producer organisations. We next discuss the position of the Parliament as co-decider to the Council in internal energy market issues, asking whether the proposal reflected a shift in parliamentary backing of more radical liberalisation. Then, we scrutinise the positions of member state governments, asking whether the proposal reflected that the Commission after all expected final backing by the Council. We finally check out changes in EU-external factors and how these affected the Commission proposal.

The section rounds up summarising and analysing influences on the Commission based on the propositions set forth in section 2. We conclude on the relevance of *supranational institutionalism*, *intergovernmentalism*, and the *multi-level governance* approaches to interpret the Commission proposal.

4.1 The Commission

We certainly expect a strong latent will in the Commission to push energy market liberalisation across the member states. A major *raison d'être* for the Commission is to work for tighter market integration, based on the EU Treaty principle that close economic ties between the member states will contribute to prosperity and stability in Europe. The Treaty states free movement of goods, services, capital and labour as key building blocks for European economic co-operation. To be sure, the Commission has over the years been allocated a far broader mandate, to work also for greater social and cultural development and integration of environmental considerations into policies, as examples. Even this broader mandate, however, is partly motivated by the goal of dismantling barriers to competition, given that non-harmonised public regulations in these fields will give uneven competitive conditions for industries across the member states. Hence, it makes sense to discuss whether the Commission proposal, and in particular the provision calling for mandated ownership unbundling, reflected a stronger actual *independent* will of the *Commission* than before to push forward internal energy market liberalisation.

A long-term perspective is taken to track changes in the role played by the Commission and its services in pressing forward member state actions in the field. As noted above, the Commission had an active independent role when proosing the idea of the internal energy market in the late 1980s, reflecting its will to extend market integration into yet another area not

covered by the Single European Act of 1987 (Matlary, 1993; Lyons, 1992). The Commission acknowledged in its proposal that the dominant vertically integrated utilities in national supply of electricity and gas posed challenges to the internal market and discussed different *decision procedures* for how to proceed in making competition work for these sectors. One of these was the application of EU competition rules (then article 85 and 86 EEC) against the utilities to dismantle dominant market positions. Another was to initiate infringements procedures according to Article 169 EEC against member states. It also acknowledged the need for specific directives for these sectors, which could either be formulated unilaterally by the Commission based on Article 90 (3) EEC; or on the basis of Article 100a EEC-Treaty, a consensus-based procedure allowing other EU bodies to participate in deciding the pace and scope of the liberalization package (Eising (2002; Lyons, 1992:23).

Acknowledging that energy was widely regarded as a common good within European member states, with dominant public utilities a normal structure in energy supply, the largest part of the Commission, including DG Energy, the member states and the European Parliament preferred a consensus procedure (article 100a) to allow for *incremental* change (Eising, 2002). DG Competition on the other hand, opted for a faster break-up of monopoly structures by using competition rules and Article 90 for pressing forward gas and electricity directives (Eising, 2002). In fact, the Commission allowed DG Competition to start up proceedings against gas and electricity import/export monopolies and sent letters to member state governments asking them to justify their national monopolies, warning that the Commission would act aggressively in order to achieve a single market in energy (Lyons, 1992:23). DG Competition was inspired by a March 1991 judgement by the European Court of Justice (ECJ) upholding that the Commission could use such procedures to force greater competition in the *telecommunications* sector (Lyons, 1992:13).

Intense lobbying of commissioners by national governments, energy industries and the European Parliament, however, sent clear signals to DG Competition to keep its hands off the internal energy market. And, in 1994, the European Court of Justice formalised this lesser role of DG Competition with its rulings in the so-called *Almelo* case of Dutch electricity distributors asking for dismantling the exclusive import and export rights granted to the generators (Lyons, 1998:34). The ECJ found that Articles 85 and 86 of EU competition rules had been breached, but that Article 90-2 offered the companies opportunities for derogation if operating under public service obligations. It did not make any judgement on whether the obligations necessitated the monopolistic behaviour in the specific case, however⁹.

DG Competition was therefore unwillingly constrained in playing any active role in EU energy market policies during the decade. To be sure, the Commission continued to remind European politicians that an option existed under EC Treaty rules to apply general competition rules, used to press member state governments adoption of the first liberalisation package (Lyons, 1992:24) and restated by the Commission in 2001 to press forward the second liberalisation package (Commission of the European Communities, 2002).

The situation changed however, when annual Commission *benchmarking reports* from 2001 showed that several member states continued to lag behind in implementation of the directives and that dominant market structures remained impediments to the realisation of fair competition in the EU. The rush of mergers seen in the energy industry was viewed as even aggravating the problem (Commission of the European Communities, 2001).¹⁰ Voices calling for the Commission to apply stronger measures against this development became louder.

The new Commission appointed in 2005 under José Manuel Barroso as President thus took on a new line in internal energy market policies. As part of his general plan to revitalise the Lisbon agenda under his period of service, he promised a more pro-active application of *competition policy* to meet this end, including the screening of industrial sectors for barriers to competition (Commission of the European Communities, 2005). The internal energy market was chosen as one of the pilot cases, with DG Competition and DG TREN jointly launching a major inquiry of competitive conditions in the European electricity and gas markets.

This joint project started what was to become an era of tight co-operation between the two directorates in internal energy market policies. When the first results of the energy sector inquiry started to tick in, DG Competition was convinced that a new liberalisation package was needed. DG TREN was not fully convinced, but the preliminary report made early 2006 was the tipping point leading the two DGs, and the commissioners Neelie Kroes and Andris Piebalgs, towards agreement on the need for a new, more radical energy liberalisation package.¹¹

After the European Spring Council 2007 acclaimed the need for a third liberalisation package, the two DGs actually proceeded with *co-writing* the draft. According to sources with the Commission, such co-drafting of new legislation was something particular in the life of the Commission, normally bound by the high-level agreement that DGs do not interfere in each other's policy domains.¹²

And DG Competition surely came to put its mark on the co-drafted proposal. DG Competition pushed hard for 'ownership unbundling', despite of the signals given by member states constituting a blocking minority. The alternative ISO-model was secured as a fall-back position, clearly more in line with the incremental consensus-seeking procedure preferred by DG Energy. Another visible change came when DG Competition insisted that 'regionalization' as an option for a step-wise arrival at full internal market integration should be toned down in the text, a strategy promoted by the electricity supply industry and supported by DG TREN back in 2003. DG Competition feared such a procedure to increase the chance of regional cartelization.¹³

Parallel to this new direct role in policy development, DG Competition started up major investigations against specific companies suspected of breaching Community competition rules: companies allegedly using long-term contracts as a possible way of misusing their dominating position (Distrigaz, EdF and Suez-Electrabel); and companies manipulating wholesale and balancing markets. DG Competition proceeded with pre-

paring cases against the companies for the European Court of Justice, with that against German E.ON becoming the most high-profiled – leading the company in February 2008 to offer ‘ownership unbundling’ as a remedy to foreclose further action by the Commission and a potentially biting fine.

To sum up, the new role of DG Competition in internal energy market policy development certainly marked a shift from the situation back in 2003. This indicates that the new Commission under President Barroso’s leadership showed a far greater independent will to push market integration a step forward. DG Competition was given direct access to energy policy-making and informal restrictions lifted on its use of EC Treaty competition legislation instruments under its command. According to sources with the Commission, the new and closer relationship between DG TREN and DG Competition was strengthened not least by the good relationship developing between the commissioners of the two DGs. The co-drafting gave the proposal a solid anchoring in the Commission already before it was turned over to other services for consultation. This anchoring was, by the way, already ensured by Commission President Barroso’s insistence of placing the Lisbon agenda on top of the Commission priority list. According to sources within the Commission, the Secretary-General of the Commission, *Catherine Day*, played an important role in pushing for radical access provisions, further indicating the high priority given to radical market opening by the Commission.¹⁴

4.2 Changes in the Role Played by Key Non-state Actors

With our analytical framework portraying interest group influence on the Commission as an important driver of policy, this section investigates whether any fundamental changes had taken place from 2003 in the relative abilities of different interest groups to influence the Commission. With energy consumers and energy suppliers constituting the two main lobby segments in Brussels, we ask more specifically whether the former group had been granted better access to the Commission and the latter group had lost clout in these. We expect this to be the case based on the position papers of the two groups on the proposal, and on ownership unbundling specifically, which circulated in front of the Commission decision.

Interest group interaction with EU institutions and national governments has historically played a crucial role in internal energy market policy development. This was much a result of the ‘consensus procedure’ chosen back in the 1990s for development of the electricity and gas directives. When DG Energy started up law-making, it needed expert advice from agents running the national energy systems and their detailed technical and operational knowledge, giving producers and transmission grid operators particularly good access to the Commission.

The energy supply lobbying machinery in Brussels is constituted by different functionally specialised organisations. *Eurelectric*, the umbrella organisation for the entire industry, representing national electricity associations or leading electricity enterprises in all member countries and other European OECD countries, was formally established in 1989 re-

sponding to the Commission initiative to liberalise and harmonise the electricity markets of EU member countries. Eurelectric is well resourced with around 30 permanent staff members at its Brussels secretariat. *ETSO*, representing the transmission system operators was established after the first liberalisation package in 1999. *ETSO* is considerably less resourced with only three persons in its Brussels secretariat, with abundant funding, however, being paid by transmission tariff fees collected by its members. *EFET* represents energy traders' views in Brussels, having a permanent staff of 3 persons at their Brussels office and 11 overall in London, Amsterdam and Berlin offices. Given that major European companies are vertically integrated in production, transmission, and trade, there is considerable cross-membership between the three organisations.

Additionally, outside the established supply industry, *EREC* (the European Renewable Energy Council) is the umbrella organisation for independent power producers that exclusively produce renewable electricity. *EREC* was established in the year 2000, after renewable energy had been put firmly on the EU energy policy agenda.

Turning to the energy consumer side, stakeholder representation in Brussels is far more fragmented than for the supply side. Energy-intensive industries are represented by the umbrella organisation *BusinessEurope* but also by separate specialised industry associations, to mention only *Eurometaux* (metal industry), *Cefic* (chemical industry), *Cembureau* (cement industry), *CPIV* (glass industry), *EULA* (lime industry), *Ceram-Unie* (ceramics industry), *Euro Chlor* (chlor-alkali industry) and *Eurofer* (iron and steel industries). A separate association, *IFIEC-Europe*, represents various national federations of energy-consuming industries. Together, *IFIEC* and European industry has founded the Alliance of energy-intensive industries to stand stronger united in important energy and environment policy processes in Brussels, reflecting the difficult situations of the organisations being considerably understaffed to exercise effective influence alone, given the many policy fields and issues affecting them. Additionally, *BEUC* (Bureau Européen des Unions de Consommateurs), represents national consumer organisations in the Brussels policy machinery.

The three supply-side industry organisations representing the 'incumbent industry' all took a 'no position' stance on 'ownership unbundling', urging instead the Commission to ensure stronger implementation of policies already decided within the realms of the second energy liberalisation package. Eurelectric and *ETSO* agreed particularly on pushing for continuation of 'regionalisation' as a first step-process towards a full-fledged internal energy market. The inability of the organisations to formulate a clear position on the ownership unbundling issue was due to highly differing member views, with some national industries already 'ownership unbundled' and others characterised by strong vertically integrated companies. A 'no position' was the only way out to maintain an impression of internal coherence, reflecting also that vertically integrated companies constitute a considerable meat-weight within the organisations (for example the German and French combined producers, TSOs and traders).

The renewable energy industry association EREC had, on the other hand, a clear position in favour of ownership unbundling, viewing radical access conditions necessary for independent producers of renewable energy to do their business.

On the consumption side, the energy consumer industry associations were largely united in lobbying for 'ownership unbundling', with variation in outspokenness recorded, however. In a joint paper issued in September 2006, commenting on the EU Energy Strategic Review, the Alliance of Energy-Intensive Industries proposed 'full ownership unbundling' as one of seven key actions needed.¹⁵ The vagueness in some of the associations' wordings on the issue stems, according to one of our interviewees in Brussels, from national companies and associations' fear of market reprisals from suppliers if pushing 'ownership unbundling' to hard.¹⁶ Business Europe, representing both energy consumers and producers, could not unite on a pro-ownership unbundling position, however, arguing instead for tapping the potential of further implementation of the 2003 package.¹⁷ As an intended intermediary between suppliers and consumers, ERGEG, the organisation of national regulators, came out with support of ownership unbundling.

Based on a series of interviews conducted with Commission staff and key stakeholders in Brussels in February 2008, we find clear indices of a shift in relative influence of energy suppliers and consumers on the Commission taking place in the period 2003 (the process leading up to the second package) to 2007. This shift was, however, much a product of the above described internal shift in the Commission, with DG Competition coming to play a more active role in drafting energy market legislation. The interconnections between these two levels are quite obvious. The rationale of DG Competition is to protect free-market solutions, with 'consumer sovereignty' as the fundamental normative stand for why competition is good for societal welfare. Energy-intensive industries in Europe were instrumental in pushing for an energy sector inquiry and supplied the Commission with information on markets where access conditions were flawed, leading to the conclusion that full ownership unbundling would be necessary. The rationale of DG Energy is more complex, with competitiveness of European energy-consuming industries as only one of several goals pursued and with a more practical stance on the issue of how to align European energy industries behind the internal energy market idea. A close relationship evolved between DG TREN and European energy industries in policy development, not so strange given the asymmetry in knowledge between the regulator and the market agent. In course of the internal energy market history, DG TREN has been highly dependent on technical advice from the agents actually providing security of supply – the producers and TSOs.

The shift in access conditions to the Commission and also in self-perceived influence is well described by one of Brussels supply-side lobbyists stating that while suppliers in 2003 had only one close interlocutor with the Commission, the situation in 2007 was different due to the major role played by DG Competition. Another supply-side lobbyist confirmed this description of the situation, stating that DG Competition is generally more closed for lobbyists, given its credo of

independency from market agents. A lower level of influence by the supply-side is indicated by the fate of the idea provided by Eurelectric to pursue market integration through regionalisation (part of the 2003 package), possibly by allowing the merger of national TSOs into a greater regional body. According to sources within Eurelectric, DG TREN supported this proposal. DG Competition was against regional TSOs, however, fearing regional cartels, and the option was left out of the proposal.

Based on studies discussing resources needed for getting access to Commission policy-making (see section 2), we cannot conclude that superior financial and secretariat resources had any decisive effect on the Commission's decision to retain 'ownership unbundling' in the proposal. To be sure, the energy consumption side showed up with greater internal coherence between different organisations on the issue while supply-side organisations were troubled with internal differences, supporting 'ability to unite' as a valuable lobbying resource.

Our interview data shows, however, that beyond the 'ownership unbundling' proposition, supply-side organizations appeared with some direct influence on other propositions where the Commission was dependent on more detailed expert advice. This description fits well the fate of provisions initially proposed to on market transparency guidelines. EFET, organizing companies having as a rationale to earn a profit on knowing more than others, lobbied successfully for amendments of the original proposal, joining forces with financial trading organizations FOA (The Futures and Options Association) and ISDA (International Swaps and Derivatives Association) insisting that far-reaching transparency in disclosure of market information was not necessary for the market to function well.

Another question remains, however, to what extent the Commission expected the supply industry to change position on 'ownership unbundling', given that a large part of individual energy producers in Europe have already carried out such unbundling.

Interviews conducted support to some extent that such a line of reasoning contributed to making the Commission determined to retain 'ownership unbundling', despite of signals that the Council would not accept this provision. Within both DG TREN and DG Competition, high-level staff members share expectations that the future electricity will resemble the internet, with many small agents dispatching renewable energy on the grid to fulfil the new EU climate goals, making vertically integrated TSOs acknowledge that ownership unbundling makes commercial sense. Operating such a business would be 'worlds apart' from the current practice of serving a few central producers, making specialized grid operators better prepared than vertically integrated companies, according to Commission expectations.¹⁸ Other factors expected by the Commission staff members to reduce the strategic value of owning grids and setting in motion voluntary ownership unbundling are stronger rules on how to conduct ownership and grid tariffs being squeezed by national regulators making it less of a cash cow. Interviewees in the Commission indicated, however, that any similar 'unbundling' was not expected for the natural

gas market where the grid, by comparison, would continue to have a much greater strategic value to the structure of the industry. In fact, Gazprom's inroad into Europe's grid and retail businesses, in Germany as well as in France, represents a structural development of more vertical integration and control, expected to influence also other companies' incentives to hold grid ownership.¹⁹

On top of this, the new active role of DG Competition in clamping down companies' misuse of dominant market positions represented a stick that the Commission could potentially use in bargaining ownership unbundling deals with vertically integrated companies. Hindsight information shows that such bargaining in fact took place. On February 28th, 2008, E.ON, one of the staunchest critics, made a surprising U-turn and announced it would sell its German electricity-transmission grid, plus about 20% of its local generating capacity, in exchange for an end to the antitrust investigation carried out by Neelie Kroes, the EU's competition commissioner.²⁰ Late July, 2008, Vattenfall Europe AG, the German subsidiary of the Swedish Vattenfall, followed suit, announcing that it would sell off its high voltage grid.²¹

4.3 A Changing Role of the Parliament?

Having focused on the European Union's administrative unit and interest group lobbying, we now turn to the role played by the European Parliament as one of the supranational co-deciders of EU internal energy market policies.

Data indicates clearly that the Commission expected support from the Parliament. On 10 July 2007, the Parliament Plenary Session backed the Commission January 2007 proposal, including ownership unbundling. The vote was based on a report prepared by ITRE Committee representative Mr. Alejo Vidal-Quadras, Spanish MEP and leader of the EPP-ED group (Group of the European People's Party – Christian Democrats – and European Democrats in the European Parliament), lashing out against efforts by certain governments, such as France and Germany, to create 'national energy champions' as a form of protectionism.²² The report went far in its critique of national energy industry structures, portraying France's public companies EDF and Italy's Enel as non-compatible with free competition, suspecting them of subjecting the functioning of the internal market to national political considerations.

The vote showed, however, a major group of parliamentarians not supporting ownership unbundling, with different political groups split on the issue along national lines, entailing that the outcome would still be uncertain when the Parliament moved from this 'trial voting' to the real decision situation. The Commission had additional information, however, that strengthened its expectations that the parliamentary majority would prevail in the final vote.

First of all, the Parliament majority was supportive also of the second liberalisation package adopted in 2003. The Parliament has traditionally voted in favour of *consumer interests*, and backed the second package only after securing a range of amendments focusing on consumer protec-

tion and a continued right for member states to regulate prices to vulnerable consumers. They also pushed for a provision that would have mandated energy companies to inform consumers on energy sources used to generate electricity – the so-called *certificate of origin* – a provision adopted against the will of the electricity industry, represented by Eurelectric.²³ The Commission certainly had reason to believe support also for the third liberalisation package, given the louder and more united voice in favour by major consumer interest organisations.

As such, the real tipping point for the Parliament support of more radical market opening actually came prior to 2003. When debating the second liberalisation package March 12, 2002, the Industry, Trade, Research and Energy Committee (ITRE) members across all political parties supported the Commission proposal. A strong voice in favour came from the rapporteur, Claude Turmes:

This is a test case which will establish the direction in which we want to take the new electricity market – forwards to greater transparency or backwards to the days where national incumbents dominated the market. A fundamental part of a truly transparent European market is ownership unbundling of the transmission system. We must have the full separation of transmission from other parts of the energy network. Without this, cross-sector subsidies and unfair competition will never end; this is an essential part of the reform package.

A notable exception from the united backing of the second liberalisation package was the agreement across political party lines of the French representatives, who voiced strong warnings against the directive proposal and its effect on public service obligations.

Another factor that might have convinced the Commission that the parliamentary majority would prevail to the bitter end was its awareness of the parliamentary norm that representatives chosen to prepare and organize the legislative process in the Parliament, so-called rapporteurs, would not be chosen from groups with highly deviant opinions on the matter discussed.²⁴ The rapporteurs are important agents in efforts to maintain and possibly expand support from individual Parliamentarians. Their powers include making recommendations for a vote and monitoring progress of Parliament's opinion on a Commission proposal. The rapporteur has an important role in finding compromise amendments and enjoys increased speaking rights in the Parliament.²⁵ The CFPS 2006 study showed that the relationship between rapporteurs and the Commission was usually described as cooperative, conditional, however, on degree to which the rapporteur agrees with the Commission (CFPS, 2006: 20).

4.4 The Role of Member State Governments

Given the negative signals of the Energy Council only three months ahead of the Commission adoption of the proposal on ownership unbundling, this section discusses whether the Commission still could have had reasons to believe in a turnaround by key member states. In other words, we discuss what role member state governments played for the preparation of the new policy package in the Commission?

It seems clear that, from a longer-term perspective, the Commission had reasons for optimism, given the steadily increasing number of member states that from 2003 already had taken the step to separate ownership of transmission and production activities. At that point in time, only 6 member countries had separate ownership in the national electricity sector and 2 in the national gas sector (Commission of the European Communities, 2003). By 2007, these numbers had reached 13 and 10 for the electricity and gas sectors respectively (Commission of the European Communities, 2008). The Commission thus had reason to hope that a formal policy proposal would push member states already contemplating ownership unbundling.

Looking beyond the numbers, major member countries like Germany and France belonged to the group not ownership unbundled and with major flaws also with respect to implementation of other conditions for a competitive market to occur. Table 1 below lists the score of member states on deviations from conditions that the Commission in its 2003 Benchmarking Report viewed as beneficial for the internal energy market to function properly. The EU counted only 15 member states at this point in time.

Table 1. Member state scores on deviations from good competitive electricity and gas market conditions, 2002 (16 deviations possible, 7 for electricity and 9 for gas)

	UK	Fin	Spa	Swe	Ita	Aus	Den	Net	Bel	Gre	Irl	Por	Ger	Fra	Lux
El	0	0	1	1	1	2	2	2	3	3	3	3	3	4	5*
Gas	0	n.a.	1	6*	1	1*	3	4	2*	n.a.	3*	n.a.	7	7	5
Tot	0	0#	2	7*	2	3*	5	6	5*	3#	6*	3#	10	11	10*

Source: Commission of the European Communities (2003)

The table indicates the major asymmetries in internal energy market implementation existing at this point in time. At one end of the spectrum, the UK and Finland lived up fully to Commission expectations. At the other end, France, Luxembourg and Germany scored high on defections from ideal internal market implementation. The asymmetric national efforts reflected relatively stable underlying national patterns.

The UK's wide compatibility with internal market conditions was one token of the country's early liberalisation of the energy market. The UK championed neo-liberal thinking in Europe, during the various Thatcher administrations from 1979 onwards. The electricity and gas markets were made subject to competition regulation in the UK already in the 1980s. UK politicians were central when the Commission drafted its first internal market directives (Lyons, 1992). Germany and France were among the sceptics. Germany had just started its unification programme, involving a massive restructuring of East German energy industry, where coal had been subsidized on a massive scale, as indeed was the case also

in West Germany, a symptom of the country's lack of alternative indigenous energy sources. Germany therefore found itself in no position to accept EU energy policies that could lead to a swift shut down of the coal industry, with even higher unemployment and social turmoil as potential results. France was sceptic because the new liberal governance ideas were far from the French tradition of state-planned industry policies. Under this regime, France had embarked on a massively subsidised nuclear power programme as a way of curtailing its import dependency. The nuclear industry had become an important export industry and a matter of national pride. France could not accept EU policies that threatened the nuclear industry.

Looking at the situation in 2007, the energy sector inquiry published in January indicated still major deviations from competitive conditions in a number of member states. Although not the only defectors, France and Germany got much attention, home to the largest national companies in Europe, EDF and E.ON, being accused for combining home market protectionism with market expansion into countries that had played by the rule and opened their markets for full competition. The 2007 Benchmarking Report of the Commission showed, however, that also many of countries entering the EU after 2003 lagged seriously behind in free-market conditions, having vertically integrated and highly concentrated energy structures.

What signals came from these member states prior to the Commission launch of its policy package in September 2007? Did the Commission have reason to expect a turnaround from France and Germany or the support of a sufficient number of the new member states?

Immediately after the Commission published its 'teaser' on ownership unbundling in its January 2007 strategic energy review, the German government actually sent cautious positive signals to the proposal. Joachim Wuermeling, the economy state secretary, stated: 'Germany is open to the discussion about ownership unbundling and also open to the idea of an independent network operator'. His boss, economy minister Michael Glos, added that he would have to check if mandatory sell-out was compatible with the German constitution.²⁶ A French diplomat, on the other hand, told the EU Observer that 'We do not want to weaken the position of companies with respect to their foreign suppliers, so maybe we would prefer the weaker [ISO] option'.²⁷

The European Spring Council in March did not give any clear signals, but stated that the first step should be to ensure full implementation of existing Internal Market legislation.²⁸ It added that the Commission should assess further how to ensure that third country companies would comply with new demands for ownership unbundling, and evaluate the need for a 'reciprocity clause'.

The June meeting of the EU energy ministers backed the need for action on unbundling but also stated ownership unbundling was out of the question for several member states, constituting a sufficient number for a blocking vote in the Council.²⁹ With Germany and France in the lead, leakages from the meeting showed that ownership unbundling was

opposed also by the ministers of Austria, Greece, and Luxembourg as well as those of the new member states of the Czech Republic, the Baltic States, Slovakia and Hungary.³⁰

No public statements indicate that these member states changed positions in the short period of time leading up to the September launch of the proposal. What could then have convinced the Commission to retain the proposal for ownership unbundling? Several factors could have underpinned a hope that some member states would turn around on the issue.

First of all, the Commission could have hoped for a last minute change in political dynamics within the member states. As discussed above, the Commission had reasons to believe that some of the major companies under investigation by DG Competition for infringement of EU competition rule would accept a deal for lower fines in return for the sell-off of their network businesses. These companies constituted important lobbyists at the national level, major voices affecting member state government positions on ownership unbundling. Company pressure on member state governments would obviously weaken without any reason to defend the right to own both production and network assets, making it easier for the national governments to accept the Commission proposal.

Secondly, the Commission recorded that European Union leaders at a meeting late June 2007 showed a somewhat greater willingness to accept dealing with security of supply issues at the EU-level, a change from the past when member state governments had insisted that this was a sole national responsibility. At this meeting, EU leaders reached agreement on revisions of the new EU Treaty, which for the first time came to include a reference to solidarity in the event an energy supply problem should occur for one of the member states. The Commission might have interpreted this move as a signal that several member states were on the move to accept deeper internal energy market integration if convinced that other member states would stand up for them should a crisis occur. Fears of greater security of supply problems under a full free-market regime has been a critical factor nourishing member state opposition to split up the powerful national energy companies.

Thirdly, the Commission may have hoped for a turnaround in position by some member states after including in the last minute a third country clause in the proposal. This clause was nick-named the Gazprom-clause, included to appease those countries' reluctant to ownership unbundling specifically out of fear that Russian Gazprom might cease the opportunity to buy networks on sale and hence, to get a firmer grip on the European gas market and. According to sources within the Commission, Poland was particularly instrumental in demanding such as clause for accepting ownership unbundling.

Finally, as spelled out earlier, the Commission had a powerful alliance behind its proposal. This included energy-intensive industry associations at the EU and national levels – also in member states where the government opposed ownership unbundling. As a typical example, the German Steel Industry Association in a policy statement in front of Germany's EU Presidency in 2007 made clear that: 'If, as a result of the

current regulations on grids, the intended market inputs fail to materialise in the medium term, an ownership unbundling of grids must be considered as a further step, as this is the only way to ensure that the structure of grid access is really free of discrimination for all potential grid users'.³¹

The alliance also included renewable energy interests, the European Parliament, ERGEG (although with some national regulators not backing ownership unbundling) and not least an increasing number of member state governments – all voices that could possibly influence reluctant member states and swing the pendulum towards a positive vote in the Council.

Hindsight shows that the Commission's hopes did not come fully through. The Commission indeed saw major German companies announcing ownership unbundling as part of deals to avoid biting fines for infringement of EU competition regulations, but so far, this did not change the German government's strong opposition to ownership unbundling. In a letter dated 29 January, prior to the E.ON announcement that it would sell off its transmission assets, a group of eight member states, headed by Germany and France, refuted mandatory ownership unbundling and also the alternative Independent System Operator-model proposed by the Commission as a fallback-position. A third option, later termed the Independent Transmission Operator – model, was tabled, one mandating more independent management of national transmission companies and stricter governmental control of such extended legal unbundling. In June 2008, the Energy Council stated that this alternative ITO-model would be included among the options available for the member states.³² The decision meant that also the third country clause became obsolete. The Energy Council endorsed a new agency for the co-operation of national regulators in cross-border issues but denounced the proposal to give this new body actual decision power.

4.5 The Role of EU-external Forces

While the analysis so far has concentrated on EU-*internal* factors, the sections above have also showed that the Commission proposal was influenced by forces outside the EU. As noted above, the European Council Spring meeting in March 2007 called for the Commission to address specifically the problem of vertically integrated companies from third countries entering the European transmission and retail market business and proposed a specific clause in the legislation specifying that ownership unbundling would also apply for these. The background was the Russian state-owned gas company Gazprom's past years' acquisition ventures into downstream natural gas businesses in Europe and underlying concerns that a unilateral split-up of EU companies could weaken their power of negotiation vis-à-vis Gazprom and create an even greater Russian strategic grip on European energy supply.

The mistrust of Russian motives in European gas supply is currently deeply rooted in parts of Europe, not least among many eastern countries that experienced Russian dominance during the cold war. Gazprom has been accused for serving as an instrument for Russia to regain the geopolitical influence lost after the collapse of economy and break-up of

the iron curtain. The incidence early 2006 when Gazprom held back gas supply on the pipeline to Europe through Ukraine, allegedly because of disagreement over transmission payments, causing loss of supply also to countries inside the European Union, only reinforced perceptions in many member states of Russia as a non-reliable gas supplier.

The last-minute introduction of the third country clause, also nick-named the Gazprom-clause, should therefore be seen as a move by the Commission to peace those countries' that were reluctant to accept ownership unbundling out of fear of increased strategic power for Russia. Poland was particularly instrumental in demanding such as clause to accept ownership unbundling.

The Russian government, on its side, lamented the proposal. A commentator with the Russian *RIA Novosti*, associated with the Russian government, stated in August 2007 that the proposal marked efforts to prevent non-EU members from investing in its energy infrastructure, primarily directed against Russia's Gazprom, supplying Europe with a quarter of the gas it consumes.³³ This marked an already bad relationship between Russia and the EU in the energy sphere after the Financial Times in April 2006 disclosed UK plans to adopt special legislation to prevent the acquisition of UK enterprises by Russian Gazprom – for energy security considerations. The action came after Gazprom had stated it was interested to buy the UK gas supplier Centrica, as well as the international energy company Scottish Power. It also marked a noticeable shift in UK government policies, which in 2003 adopted a law under which the government may not block a merging of companies or their takeover on the British market for political considerations.

Gazprom CEO Alexei Miller reacted harshly on what he saw as artificial obstacles on the European market that are based on considerations of political expediency, and warned that growth of energy deliveries to Europe could decrease by a reorientation toward China (Romanova, 2007).

The European Commission stated on the dispute that the EU would not tolerate threats and expected contractual obligations to be met in full, pointing out that Gazprom was free to diversify its deliveries for commercial purposes, but that its behaviour had had confirmed European concerns about the stability of supplies from Russia and therefore the need to diversify channels for the delivery of natural gas.

Yet other events worsened further the relationship, such as Gazprom's announcement in October 2006 that it would not need any foreign partnership to develop the Shtokman gas condensate field, despite lengthy negotiations with Norwegian, French and American companies, and also Russia's decision not to participate in the Energy Charter Treaty.

The dispute between the EU Commission and Russia clearly reflects different interests but also different views on what is good for security of supply in the EC. Russia wants long-term contracts to ensure a market for development of new energy projects. With such long-term contracts under pressure by the EU Commission to increase spot market liquidity in

the internal market, ownership of distribution assets constitutes an alternative commercial risk reduction strategy for Gazprom. Gazprom argues that spot-market conditions are simply providing the company with too much risk long-term development and hence for long-term security of supply in Europe.

Russia's views have met greater resonance in the German and French governments, certainly contributing to the good dialogue and bilateral agreements in recent years between these member states and Russia.

4.6 Summary and Conclusions

What agents and factors then influenced most the Commission proposal of a third energy liberalization package? To what extent has our study supported the propositions generated from supranational institutionalism and intergovernmentalism? And, what evidence is provided for a multi-level governance approach to explain the proposal?

Much evidence supports that the Commission showed up with a far clearer *independent will* than before to ensure member state progress in finalizing the internal energy market process. It seems clear that the Commission itself was the key architect of the proposal, viewed as necessary to bring the internal energy market project to a new level of functioning. The specific decision to go ahead with the provision mandating ownership unbundling for transmission system operators was in turn promoted particularly strongly by DG Competition. Under the leadership of President Barroso, DG Competition assumed a new prominent role in pushing internal energy market policies than under the preparation of the first and second policy packages. While DG TREN earlier had drafted legislation in the field alone, DG Competition this time came in as a full-fledged co-drafter, putting strong marks on the final outcome and shifting the regional market development approach entered by DG TREN in 2003. The new strong role of DG Competition was further evidenced by its decisions to investigate major vertically integrated companies for breaches of Community competition legislation and to file cases against them for misuse of dominant market power.

Notwithstanding the clear independent marks put on the proposal by the Commission, it was formulated under clear support also from the European Parliament. A majority of MEPs supported mandatory ownership unbundling of TSOs as well as other provisions proposed to improve the functioning of the internal market. This certainly strengthened the Commission conviction to go ahead with quite radical changes compared to that proposed back in 2003. Nothing indicates, however, stronger support from the Parliament than in 2003, all the time a great majority also then backed the Commission. In fact, many MEPs, the rapporteur on the Electricity Directive included, opted for mandatory ownership unbundling already at that point in time. And, compared to 2003, the minority with reservations against more radical market-opening appeared as larger in 2007. The strong backing by the Parliament adds support to a *supranational institutionalist* interpretation of the Commission proposal.

Turning to the role played by member state governments, the British Government took a leading role together with the Netherlands and the Scandinavian countries in lobbying for mandatory ownership unbundling, a group also including other countries that had already implemented ownership unbundling for electricity and gas TSOs. In fact, this included most of the 15 countries that were members in 2003. Isolated, this factor could have made the Commission expect far greater member state support for ownership unbundling than what had earlier been the case, supporting an *intergovernmentalist* interpretation of why the Commission came up with the proposal.

On the other hand, Germany and France took the lead of a new alliance warning the Commission not to include this provision. This alliance included a minority group of EU-15 member states that had not yet carried out ownership unbundling as well as a group of new member states entering in 2004. The period 2003-2007 saw the inclusion of 12 new member states, many of which still hosted vertically integrated TSOs. Three months ahead of the Commission launch of the proposal, an Energy Council meeting showed that mandatory ownership unbundling would not get a qualified majority vote among the member states. This fact points *against* a strong intergovernmentalist interpretation of why the Commission came up with the proposal.

The Commission apparently hoped for changes in member state positions during the further course of the legislation process. A possible scenario for the Commission was that major vertically integrated companies under investigation by DG Competition for breaches of EU Competition Rules would strike deals involving the sell-off of network businesses to avoid biting penalties. This strongly points to a *multi-level governance interpretation* of the proposal, giving non-state agents an important role for understanding why the Commission retained ownership unbundling despite clear signals of disapproval from a blocking minority of member states. The Commission was aware of the multi-level governance characteristics of the EU policy-making system, with non-state actors seeking influence through both the EU and national venues, the Commission certainly hoped that such sell-off would next lead to less intense industrial lobbying against ownership unbundling at the national political scene, and finally, change the position of member state governments. The Commission was aware that national federations of powerful energy consuming industries, consumer organizations, renewable energy industry interests and environmental NGOs disagreed with national government positions, notably in Germany. If energy suppliers were forced to sell off their networks, losing reasons to defend a stiff position on the issue, these other voices would become relatively louder in national political discussions.

Our study certainly supports that non-state agents also played a more direct role in influencing the Commission proposal. The Commission was subject to intense lobbying by the different Euro-federations of energy-intensive industries, specialized in lobbying EU institutions. These federations of industrial energy consumers actively fed the DG Competition with information for the energy sector inquiry, a central background paper for the Commission's final proposal and for DG Competition's decision to go ahead with investigations against specific companies. The

energy consumption-side lobbyists gained influence relative to the major energy supplier federations in the period 2003-2007, due partly to better co-ordination between different industry organizations (through the Alliance of energy-consuming industries established in 2004). More importantly, the major supply-side organizations were deeply split on the issue, reducing their abilities to present a forceful position and reducing their thrust on the Commission. The supply-side organizations also lost influence after DG Competition took on such an active policy development role alongside DG TREN, the latter being the supplier side's key interlocutor with the Commission.

The relevance of using a multi-level governance perspective is also strengthened by evidence that forces outside the EU *indirectly* put their mark on the Commission proposal, illustrated by the last minute inclusion of the third party reciprocity clause. To be sure, demands for such a clause came from within the EU but the immediate background was the acquisition behaviour of Gazprom observed in European markets from 2002 onwards. Some member state governments needed such an additional clause to be sure that ownership unbundling would apply also for foreign companies seeking infrastructure ownership to strategically hedge their upstream resources. Gazprom's acquisition strategy was certainly rational, as an alternative mode of controlling sufficient demand for its upstream gas resources in light of the pressure seen against long-term contracts in the European gas market. Russia expressed a strong negative position on 'ownership unbundling', stating it to increase the risks of long-term development of Russian gas resources and hence, to aggravate security of supply problems in Europe. *As such*, Russia did not influence the Commission proposal in a positive and direct way. It rather had a negative and indirect influence. It was negative in the sense that the last minute inclusion brought the final proposal further against Russian interests. It was indirect, in that it responded to member state governments expressing fears of Russian dominance in EU energy supply.

Summing up then, there are clear evidence that the Commission proposal was primary the result of a stronger will of the Commission itself to press recalcitrant member states to open up their national markets. To be sure, the Commission got ammunition from the energy consumption side which was far more united than in 2003 and more extensively included as information-providers for the Commission, at the cost of the supply-side. And, a greater number of member states had already carried out what the Commission proposed, increasing national government pressure on the Government to go ahead with the proposal.

There is also strong evidence for the relevance of the multi-level governance approach to explain the proposal. The Commission was aware that a blocking minority of member states was against ownership unbundling and that national-level lobbying by vertically integrated TSOs was much to blame. It expected, however, that the direct pressure put on some of these companies could make them decide to sell off their grids anyway, potentially removing their clout in national-level lobbying. This could next remove an important reason for member state government opposition. Evidence that Russian politics played an indirect role, through influencing member state positions on the proposal, strengthen the relevance of using a multi-level governance framework to analyze the proposal.

5 Changes in Policy Core beliefs and Networks – Expanding the Explanatory Power of the Multilevel Governance Approach?

Having analyzed different groups of agents separately for their influence on the Commission proposal, this section briefly discusses whether changes in greater policy core beliefs and networking around these can add explanatory power to our study. Acknowledging the greater energy policy debate of the European Union, we ask whether the proposal in fact reflected a strengthening from 2003 of a coalition arguing for free-market solutions as superior to government regulations in solving greater energy-related environmental and security of supply problems. Ever since the late 1980s, different perceptions of whether market-based solutions are appropriate or not for achieving greater public good objectives have surfaced whenever new internal energy market-related policy proposals were under discussion.

The section detects and analyses changes of such *policy core beliefs* within the Commission, industrial groups, the Parliament and member states, respectively. It rounds up with a short discussion of greater networks evolving on the issue in Europe – whether policy networking followed divisions observed in policy core belief systems. At the outset, the Commission proposal would be consistent with growth in strength of the coalition advocating free-market solutions as the most appropriate answer to Europe's environmental and security of supply problems.

5.1 Policy Core Beliefs within the European Commission

We find indications of different policy core beliefs having historically lived side by side within the Commission, not so strange given the different mandates and priorities of the various services concerning these larger energy policy goals.

Back in the late 1990s, when the idea of an internal energy market was born, climate change had been lifted on the international agenda by the UN World Commission on Development and the Environment's call for 'sustainable development'. The potential conflict between a free market in energy and reduction of climate gases was duly acknowledged, and European Community discussions therefore focused on what environmental policy instruments would best serve its purpose without interfering with the internal energy market principle of market-based tariff-setting. The Commission singled out a common energy/CO₂-tax as the first-best climate policy solution (Andersen, 2000; Lyons 1992). The tax proposal was, however, not endorsed by the member state governments.

This was a set-back for the climate policy mission of DG Environment and posed a challenge also for DG Energy, concerned with the Community's security of supply. After all, competition in energy supply was expected to reduce energy prices, with higher demand as a result. Unchecked by policy instruments that could offset such lower prices or at least the price of climate- and security of supply-unfriendly energy sources, the mission of the two services would face serious problems.

As noted by Skjærseth and Wettestad (2008:74), DG Environment was during much of the 1990 inhabited by civil servants inclined to command-and-control instruments and sceptical about using so-called market solutions to environmental problems. This scepticism could well have reflected 'policy core beliefs' that market solutions would not produce environmental results, but certainly also a more pragmatic stance on the issue. The CO₂-energy/tax-proposal had failed to get through the Council. Command-and-control regulations in fact stood a better chance of being adopted by the Council, after Maastricht Treaty in 1994 settled qualified majority voting for such instruments, unlike fiscal instruments that still needed full consensus.

A major shift of staff in DG Environment in the late 1990s brought a new group of neo-liberal minded economists into service, embracing more whole-heartedly the belief in market solutions as superior to achieve environmental goals, producing most significant reduction of environmental stress at lowest costs (Skjærseth and Wettestad, 2008:74). This new group set out to promote and develop trading of emission quotas as a European Union climate policy instrument seen as compatible with the internal market logic.

Historical records points to a somewhat deviant development path for DG Energy. During the 1990s, this service was a firm supporter of dismantling monopoly structures in the energy market and of applying market-compatible instruments to deal with climate change and security of supply concerns. When renewable energy came on the agenda as a possible solution, DG Energy argued forcefully that liberalisation 'can form the basis for a dynamic and secure role for renewables so long as adequate market-based instruments are provided' (Commission of the European Communities, 1997: 15). And, when DG Energy published its first follow-up report on internal energy market barriers not dealt with by the electricity and gas directives, the differential support systems for renewable energy across the member states was given the main focus (Commission of the European Communities, 1998; Eikeland, 2004). The Commission stated clearly that the different support systems were not compatible with fair competition and trade in the internal energy market and promised to come up with a proposal to harmonise support systems when preparing a directive on the promotion of renewable energy in EU electricity consumption.

In the 1999 Working Paper 'Electricity from renewable energy sources and the internal electricity market', DG Energy therefore argued forcefully for a harmonised Renewable Energy Certificate System as the preferred option viewed as compatible with EU Treaty Rules. The working paper elaborated in greater detail why a fixed feed-in system would eventually fail and competition-based trading instruments would win out as the best solution to promote renewables (Lauber, 2007).

DG Energy was, however, met with strong opposition from member states with feed-in systems already in place, and had to accept the continuation of what it saw as market-incompatible national instruments when proposing the renewable electricity directive in 2001.

This coincided in time with Loyola de Palacio taking office as energy commissioner. Lauber (2007) indicates that this shift made DG Energy push less vigorously for free-market forces as sole solution to overriding energy policy problems. It also coincided with security of supply assuming a new priority status within DG Energy, another issue area marked by diverging views on appropriate policy instruments. When the Commission adopted its first major green paper on security of supply in the year 2000, DG Energy, which had drafted the paper, showed additional signs of ambiguity in how it viewed the liberal energy market (Commission of the European Communities, 2000a). The green paper stated that:

The internal market in electricity ... has had two opposing effects related to security of supply. First, it has improved the overall efficiency of the energy system and created a market for more energy saving electrotechnologies.... Second, however, it has made investments, which require large capital input or which have long pay back periods less attractive. Investment in research, particularly basic research, and development of new energy technologies may be put at risk. An additional issue is the impact of competition. If this brings prices down, as appears to be the case, demand could rise as a result....This combination of factors could work to the disadvantage of supply security and consequently lead to price rises or even interruptions in supply, as has been seen in parts of the US market (Commission of the European Communities, 2001, p. 21).

Yet even more evidence of a pragmatic turnaround in DG Energy's views on the internal energy market came in the 2004 communication on the share of renewable energy in the European Union, acknowledging that market-incompatible support systems hitherto had been the most effective for deploying renewable energy sources (Commission of the European Communities, 2004; Lauber, 2007). And, reinforcing the pragmatic turn of DG Energy, Andris Piebalgs made it clear from the beginning of his term as new energy commissioner from 2005 that he did not think the time was ripe for harmonisation of national renewable energy support systems (Lauber, 2007).

What then about DG Competition, the Commission service specifically tasked to work for pro-market policies? DG Competition certainly joined DG Energy during the 1990s in questioning existing non-harmonised national energy support systems and in opting for harmonised trading-based instruments to ensure that investments in renewables were made at the lowest-cost premises within the Union. While DG TREN somehow softened its stance on the issue, accepting that national feed-in tariffs would still remain part of EU energy policy, DG Competition continued its hard line by joining in with *PreussenElectra* in its European Court of Justice case against the electricity distributor *Schleswag*, with the generous German feed-in tariff system at stake. DG COMPETITION pleaded the Court to expand the concept of state aid even to situations where no specific state resources were involved (Lauber, 2007).

At this point in time, DG Competition had also prepared new guidelines for state aid, adopted by the Commission early 2001. These were quite restrictive concerning operating aid for renewable energy sources and not

too generous concerning investment aid either, quite the opposite of what had now become generous operating support to renewables in certain member states through feed-in systems guaranteeing investors a given tariff for renewable electricity fed into the grid (Flåm, 2008).

The pending RES-E-Directive proposal suggested that the state aid provisions of the Treaty should apply for national support schemes, and if the ECJ had ruled the German feed-in system as illegal state aid, DG Competition would have been given a new platform for challenging feed-in systems more generally (Lauber, 2007). The 2001 ECJ judgement, however, rejected that feed-in tariffs should be included in the state aid concept. DG Competition was again restricted from applying general treaty rules to clamp down on what it saw as anti-competitive practices in the internal energy market.

To sum up, throughout history the Commission services have certainly differed concerning perceptions of the appropriateness of using a competitive market approach to solve greater energy policy problems. The development points towards more pragmatism rather than any strong ideational position, certainly for DG Energy.

Nonetheless, the Commissioners of all the three DGs backed strongly the Commission January 2007 energy & climate package proposal for a major restructuring of EU energy policy and the top priority given to 'completing the internal energy market for electricity and gas' as a prerequisite for dealing with climate and security of supply concerns (Commission of the European Communities, 2006a). This indicated a considerable development from the ambiguity of the 2000 security of supply green paper.

Much indicates that the new ambitious 20% goal adopted by the Council for growth in renewable energy (as a mode of making operational climate and security of supply goals) created a new alignment in the thinking of the Commission services on the free market/attainment of public good nexus of issues. It forced the European Commission to think through what constituted the main barriers in the internal market hindering mass-diffusion of renewable energy. Independent producers of renewable energy were among those pinpointing that lack of access to existing infrastructure and strategic holding-back of investments in new infrastructure was key problems for investors in renewable energy. Hence, DG Environment, the key service watching over climate gas reductions in the Community, had clear support for pushing liberalisation and ownership unbundling as not only compatible with but as a prerequisite for diffusion of renewable energy in Europe. As noted above, also DG Competition and DG Energy embraced these conclusions, although the latter pragmatically insisted on the inclusion of the ISO-model as a fall-back position to improve grid access conditions should mandatory ownership unbundling fail to get accept.

The pro-market stance of DG Environment also extended to other parts of the climate and energy package. Nilsson et al. (2008) found that DG Environment was quite liberal-market oriented also in its position on the proposed new Renewable Energy Directive, eager to see included trading

in guarantees of origin (GO) as a harmonised and internal energy market-compatible policy instrument for the member states, despite the major opposition to tradable renewable energy certificates that had materialised back in 2001 when the first directive was proposed. On the other hand, Nilsson et al. (2008) found that DG TREN, watching over EU security of supply, appeared as less enthusiastic about GO-trading in internal Commission discussions, attentive to data showing that feed-in tariffs had given superior predictability for investors and actual results in terms of diffusion of renewable energy. DG Competition supported a harmonised system of GO trading as the preferred policy instrument.

To sum up, the energy & climate package had a clear bias in favour of free-market solutions and harmonised market-compatible instruments to climate and security of supply challenges faced by the European Union. For DG Competition, this ideational basis was close to its role as watchdog over competitive conditions in the internal energy market. The support of DG Environment might well have its origin in the fact that the European Union had already accepted emission trading as an all-European climate policy instrument that had proven capable of counteracting the tendency of liberalised energy markets to produce lower electricity prices. During 2006 and 2007, the emission quota tariff was claimed a major factor behind rising electricity prices in Europe, providing the basis for a new will observed for the investment in renewable energy. The more ambiguous signals sent out by DG Energy, watching over EU security of supply, showed a pragmatic will to compromise market-based arrangements if needed to find a good solution, however.

The new framing of energy and climate policies under a common ideational basis was, however, due not least to Commission people working to co-ordinate the policy proposals from the various Commission services. Interviewees point to an important cluster of people sharing a great belief in free-market forces and free-market compatible policy instruments. These included *Catherine Day*, picked by Barroso as Secretary-General of the European Commission, and former Director-General at DG Environment; *Christopher Jones*, deputy head of energy commissioner Piebalg's cabinet and former Head of Unit A2 – Internal market in DG TREN, as well as *Peter Vis*, member of Piebalg's cabinet, who had formerly been one of the architects behind the EU emission trading system during his service in DG Environment (Skjærseth and Wettestad, 2008; Nilsson et al., 2008).

As such, there is much evidence that Commission President Barroso, having promised to put European competitiveness conditions at the top of his policy agenda, had played an important role in picking key staff that believed in solutions for greater energy-related problems that would not counteract his primary concerns.

5.2 Interest Groups and Policy Core Beliefs

Looking more closely at the position taken by major business organizations in Europe, energy production and consumption interests alike, we find that they tend to be firm advocates of free market competition and policy instruments that do not distort such competition. Such market-

based instruments are generally viewed as providing the companies with the flexibility needed to find the lowest-cost solutions to environmental problems. In practice, however, we find that industrial companies are largely *pragmatic* agents, tending towards free-market rhetoric but prepared to argue against free-market ideals when good for profits and the need to hand out dividends to restless capital owners.

This pragmatism is illustrated well by the somewhat inconsistent positions taken by Eurelectric in policy matters affecting the internal energy market affairs. At the rhetorical level, Eurelectric is actively supporting the removal of barriers to free competition as a good thing for its members. Eurelectric has become a warm advocate of harmonized governmental regulations targeting the electricity industry and was in the forefront when lobbying for a common carbon emission trading system and trade in renewable energy certificates as market-compatible policy instruments for Europe. This position is not so strange since Eurelectric after all organizes the many companies in Europe operating in markets where the government has already used its power to clamp down on anti-competitive practices.

Eurelectric was, on the other hand, still constrained to back the Commission proposal on ownership unbundling. After all, many of its members still live well under monopoly-like market conditions.

Such inconsistencies in positions on different policy matters are no less evident among the federations organizing the energy consuming industries in Europe. Although united in support of ownership unbundling and steps to increase competition between energy suppliers in Europe, the same associations argue strongly against political efforts at dismantling long-term contractual relationships between producers and consumers, viewed by DG Competition as an additional instrument to increase the amount of power traded on spot markets and hence, to ensure more reliable market-based tariff setting in the internal energy market. A deal with Belgian Distrigaz late 2007, in which the company can no longer sign any gas supply contracts longer than two years with new retail customers, and no longer than five years with industrial customers, the competition authorities signaled that energy firms can in future avoid certain anti-trust cases by limiting long-term gas and electricity supply contracts.³⁴

April 2008, BusinessEurope launched a position paper strongly in favour of maintaining the right of energy suppliers and consumers to long-term contracting.³⁵ It stated that: 'long-term contracts have become a vital instrument for reaching the goal of a secure supply of competitive energy and for keeping a strong industry in Europe'. The paper furthermore stated that for the European energy-intensive industry to be competitive on the global market, it would need electricity prices that reflect the economics of power stations supplying *baseload* electricity.

The spot-market power pricing mechanism will, however, not give differential prices for baseload and other power. Spot-market based pricing will set a uniform price reflecting the costs of producing power from the most expensive plant that are chosen to clear the supply and

demand in the market at a given point in time. Energy consumers can therefore not expect energy producers in a free market to accept lower prices for a large amount of power sold at pre-fixed terms.

Although rhetorically assuring that continuation of long-term contracts should be compatible with the internal energy market, the position paper of Business Europe certainly reflects a support of the pre-internal market order in Europe where energy-intensive industries were granted predictability over energy prices by baseload contracts negotiated under the influence of political governance. The paper reflects great disappointment on behalf of large energy consumers with the internal energy market development in Europe. Since faith in the market's ability to produce stable low prices has disappeared, the industry signals that it would fight against the dismantling of what the Commission views as another barrier to free tariff-setting in the internal market.

The position paper also adds a critique of the current use of market-based environmental policy instruments currently applied in the EU, notably the emission trading system, which have been claimed to aggravate energy-intensive industry problems. With marginal cost pricing the norm spreading in Europe, and with coal-based power often representing the marginal power plants allowed to supply in periods of high demand in Europe, the quota price of carbon added to coal-based power plants will lift the price of *all* power supplied. This prompted the large profits labeled 'windfall profits' for the electricity supply industry in Europe after the emission trading instrument finally started to function and created substantial increases in quota prices. The energy-intensive industries have launched critique against the goals adopted for renewable energy and renewable energy certificate trading, based on the same fear that the marginal cost pricing system will give higher tariffs for all power supplied under a massive development of renewables, and that renewables would not provide the industrial needs of low marginal-cost baseload power.

To sum up, European industrial agents often appear rhetorically as strong believers in free-market solutions to solve greater environmental and security of supply problems. As shown by the 20-year history of EU internal energy market policies, however, a 'perfect' free-market for energy is still nothing but a theoretical ideal, to which industrial partners are treacherous supporters, prepared to deceive if not compatible with needs for stable profits and dividends to shareholders.

An alternative pragmatic perspective is thus increasingly seen taken by industry representatives in Europe. This perspective holds that *one* theoretical ideal market-compatible policy instrument for solving greater energy-related problems will never work when markets are not perfect and when investment risks and carbon leakage possibilities exist. Instead, a combination of policy measures will be needed; including state support of renewables and a moderated emission trading system, what is advocated as a second-best solution to obtain environmental and security of supply goals in the energy sector. According to one of our interviewees, more complex economic theory is needed to analyse the needs for policy development in the European Union than that underpinning the first-best solutions currently advocated by many economics textbooks.

The Commission was indeed supported by major energy consumers in its decision to go ahead with mandated ownership unbundling to further liberalize the market. Overshadowing this partial support, however, is a growing fear that the theoretical ideal of a free market in Europe will remain just that, a theoretical idea, and growing opposition to the Commission setting in pace new ‘ideal’ policies to remove barriers for the market to set energy prices in Europe.

5.3 The Parliament and Policy Core Beliefs

The Parliamentary July 2007 debate revealed a majority of parliamentarians appearing as enthusiastic advocates of the need to ensure full liberalisation of the internal energy market as a prerequisite for attaining the larger energy policy goals of mitigating climate change and improve security of supply. This marked a change from the 1990s, when deep party-political cleavages characterised the debate in the Parliament on the compatibility of liberalisation with attainment of public service goals (Eising, 2002). The Socialists, the largest party group in the Parliament, was highly sceptical to the first liberalisation package, stressing the potential negative effects of energy sector competition on security of supply, the environment, the need to maintain equal prices for similar customers, as well as other public service obligations of the utilities (Eising, 2002). The European People's Party, mainly favouring more competition, mainly abstained from voting in the Parliament's first reading of the initial Commission proposal (Eising, 2002).

Turning to the period before the second liberalisation package was up for discussion, the Parliament discussed a Commission 1999 working paper addressing the connections between competition in the internal energy market and the deployment of renewable energy sources (Commission of the European Communities, 1999a). The rapporteur appointed by the Committee on Industry, External Trade, Research and Energy (ITRE) was Claude Turmes, representing the groups of environmental parties/the Greens in the Parliament. His 2000 report concluded that:

The Internal Market in electricity can offer advantages to renewables, through its potential for transparency, as well as the priority dispatching option specified in Articles 8(3) and 11(3) of the Directive, and the public service obligations referred to in Article 3(2).... The Internal Market does not yet even function, though this weakness is not overtly mentioned by the Commission. Some important Member States do not yet have regulatory authorities in place, or any legislation on terms and conditions for grid access. Also, unbundling is not being enforced, and we could even face monopolisation at EU level, as large mergers take place between the utilities (European Parliament, 2000).

Despite embracing the internal energy market as potentially beneficial to renewable energy deployment, the report was highly critical towards the Commission's role in pushing mandated tradable renewable electricity certificates as the main instrument in the contemporary proposal for a directive on the promotion of electricity from renewable energy sources. This instrument was regarded by the Commission as far more compatible with the internal energy market goal of competition and trade in energy

than the non-harmonised feed-in tariff systems existing in different member states. The report stated, on the other hand, that existing feed-in systems had so far produced superior results in terms of volume of renewables deployed (ibid). The lack of support by the Parliament and member states for a mandatory certificate system made, as noted in section 4.1, made the Commission accept the continuation of differential support systems across the member states in the final directive proposal, although viewed as non-compatible with the internal energy market ideal.

As noted above, a great Parliament majority supported the Commission proposal for a second liberalisation package in the debate preceding the vote, with the exception of the GUE/NGL group (European United Left/Nordic Green Left). The French representatives from different party groups, on the other hand, were strongly opposed, claiming free market competition to be incompatible with attaining greater energy policy goals. Hence, French representative of the Socialist Group, Désir, stated: ‘the energy sector is not like other sectors, and that is why the discussion cannot be restricted to the question of opening up to competition and the associated timetable. Security of supply, territorial cohesion, network and interconnection development, plant renovation and public service obligations are all essential aspects that involve long-term investment without immediate profitability but which must be guaranteed, if we are to avoid replicating the California crisis’.³⁶

Hence, already back in 2002, a great Parliament majority, with the notable exception of French representatives, adhered to the belief that full liberalisation would be compatible with reaching environmental and security of supply goals. In the July 2007 debate on the strategic energy review, the Parliament majority presented an even more optimistic view on the connection – that liberalisation was not only consistent with but also as a prerequisite for a forceful European response to the climate change and security of supply challenges.

Despite this development, the the debate actually showed an extended division in the Parliament, following national lines, than what was the case in 2003 when French parliamentarians figured more or less alone in warning against the dangers of extending liberalisation to include ‘ownership unbundling’ of transmission companies. This time, also German representatives and those from several of the countries joining the EU in 2004 had joined the sceptical group, illustrated by the various statements listed below. German *Herbert Reul*, representing the *PPE-DE Group* (Christian-Democratic parties) stated: ‘Last, but not least, there is the question of who will actually buy these networks. Who will own them in future? The state, other undertakings – Gazprom, hedge funds – or how is it actually to work? Is that really what we want? I doubt that we have found the right way with this instrument’.³⁷

Hungarian *Edit Herczog*, the *PSE Group (socialist parites)*, stated: ‘Finally, I wish to remind everyone: the goals of energy policy are Europe’s energy security, competitiveness and carbon dioxide reduction. Competition is simply a means to this end. Let us therefore not confuse the two things: we must only favour competition when and inasmuch as it truly serves energy security and competitiveness – for instance, with regard to long-term price agreements’.³⁸

French *Anne Laperrouze, the ALDE Group* (representing liberal and centrist parties) stated: 'I shall conclude with the point that has provoked debate: the issue of ownership unbundling. As far as the ALDE Group is concerned, the objective of having all operators treated in a transparent and non-discriminatory way by network managers is a crucial element of the proper functioning of the internal market. On this issue, my point of view differs from that of some of my colleagues, because I do not believe that this ownership unbundling is the key element that will enable the internal market to be completed. After it has been imposed – if this option proves to be the wrong one – the damage could harm European companies and, ultimately, the security of supply'.³⁹

Czech *Jana Bobošíková, independent*, stated: "Over 40% of gas supplies in the Union currently come from Russia. The individual Member States that have signed bilateral agreements are exacerbating this dependence, and we have to acknowledge that the situation is getting worse by the day. Relations between Brussels and Russia are not exactly perfect at the moment. Nobody knows what would happen if Russia chose to exploit the Union's dependency on its gas for political purposes. I believe it is vital to find the answer to that question before we start making fundamental changes to the way that the energy market is currently organised."⁴⁰

Finally, Polish *Konrad Szymański, representing UEN (Union for the Europe of nations)*, stated: 'our relations with Russia regarding energy are governed by the principle of reciprocity. There is one major difficulty relating to the latter, namely that the Russians interpret this principle as involving the politics of force, and take no account of European market expectations. Russia has recently forced several European energy concerns to leave its territory. At the same time, however, *Gazprom* is benefiting from the opening up of the European energy market. It has growing investments in as many as 16 of the Union's 27 Member States. *Gazprom* even has access to private consumers in Germany, France and Italy, and we all know that those countries represent the lion's share of the energy market. There is a significant conclusion to be drawn from all this. Although liberalisation of the energy market is beneficial from the consumer's point of view, it must be undertaken in such a way as to prevent Europe from becoming even more dependent on the Russian economic and political machine'.⁴¹

Summing up then, we observe a clear undercurrent within the European Parliament, growing since 2003, advocating the view that full liberalization of the internal energy market is not compatible with long-term security of supply in Europe. To be sure, the majority of the Parliament advocated ownership unbundling and full liberalization as a prerequisite for attainment of climate and security of supply goals through deployment of renewable energy. However, looking at the parallel debate on the new renewable energy directive proposed by the Commission in its January 2008 package, the free-market enthusiasm was considerably moderated, all the time the Parliament majority was not prepared to back the so-called 'trade in guarantees of origin', an instrument that the Commission saw as necessary to align political support of renewable energy with the internal energy market ideals. Instead, the Parliament

opted for the continuation of member states' rights to decide the modes of supporting national deployment of renewable energy. As such, we may conclude that the Parliament showed up with few members consistently advocating free-market solutions to greater energy policy challenges, although the majority supported the *partial* measure of ownership unbundling.

5.4 Member State Governments and Policy Core Beliefs

Ever since the late 1980s, conflicting belief systems have evoked support or opposition from member state governments whenever new internal energy market policy proposals were up for discussion. Back in the 1990s, the first energy liberalisation package was only adopted after the Council had insisted on the inclusion of a provision in the directives that gave member states the right to derogations if opting to instruct their national industries to take on public service obligations. Article 3 of the 1996 EU Electricity Directive defined public services as related to '*security, including security of supply, regularity, quality and price of supplies and environmental protection*'. Also the French Government's insistence on including the option to allow a central agency to be responsible for the purchasing of the country's electricity, the so-called single buyer model, was justified by the need for governments to retain powers to induce public service obligations (PSOs) on their national firms.

When climate change came higher on the agenda in the late 1990s with calls for an increased share of CO₂-neutral renewable energy sources in the EU energy mix, conflicting views surfaced again. Some member states, notably the UK, argued strongly for market-based policy instruments, viewed as compatible with trade and competition in the internal energy market. Other countries, notably Germany, argued that allowing the market to choose between renewables would not stimulate the broad technological change viewed as necessary for long-term combat of climate change. The competitive market would be too short-sighted, the German government argued, picking only the least cost technologies that were not in need of much development support in the first place. Instead, Germany, which had already introduced a feed-in tariff system in 1990, giving renewable energy investors fixed prices independent of the market tariff, took the lead and convinced a majority of member states to clamp down efforts by the Commission to make mandatory a system of renewable electricity certificates as part of the new directive on the promotion of renewables in electricity production, adopted by the Council in 2001.

When the *second* liberalisation package was up for discussion in the Council, member state governments had different opinions on the Commission's proposal for mandated legal unbundling of both Transmission System Operators and Distribution System Operators, the latter managing networks at lower voltage levels. Germany and France were clearly against legal unbundling whatsoever. Luxembourg had reservations for the threshold proposed by the Commission for distribution system operators to carry out legal unbundling. All other member states endorsed the proposal for legal unbundling. Public service obligations were not directly mentioned as the reason for this reservation, rather that network independence could be secured by other means. Public service obliga-

tions were debated, however, with focus on universal service obligations and whether all customers or only households should be included as entitled to tariff intervention by the government (Council of the European Union, 2002).

From 2000 onwards, energy security gained new topicality in EU energy policy, due in part to fresh energy growth figures showing an increase in import dependencies⁴² and other figures showing an aggravation of the situation after the 2000 Nice Summit opened the EU up to new applicant countries from Eastern Europe in 2004. 2002 and 2003 added to the concerns, as massive blackouts caused havoc in California, Italy, Sweden and Denmark. Voices were once again being raised questioning whether liberalised energy systems would bring about more vulnerability and short-term risks of supply distortions than under the former centrally planned systems. A sudden and persisting growth in oil prices also fanned security of supply concerns. From 1999 to 2000, crude oil prices (the Brent Blend average prices) jumped from \$17.88/bbl to \$28.39/bbl, reflecting a series of geopolitical events: unrest in the Middle East and the rapid rise in oil demand in China and other South Asian countries. By 2007, the average price had reached \$72/bbl.⁴³ Oil prices continued to escalate in 2008, reaching peaks above \$140/bbl.

Early 2006, the security of supply concerns was evoked after Russia shut down its gas deliveries to Ukraine, within the EU taken as a sign of Russia's readiness to use its gas resources as a card in seeking geopolitical influence. Since vital gas infrastructure connecting Russia and the EU passed over Ukrainian territory, also EU countries felt a reduction in the volumes supplied in early January 2006.

A new sense of vulnerability now dispersed among European member state governments who lifted long-term energy supply to the top of priorities for policy development with a call for the Commission to develop a strategic energy review for Europe.

The security of supply issue consolidated the split already existing between the member states on the extent and pace that should be taken in internal energy market reforms, illustrated well also by the split in the European Parliament during the debate on ownership unbundling in July 2007. This debate showed a division along national lines rather than political party lines. Germany, France and several new member states formed an alliance against Commission demands for dismantling their national vertically integrated companies, arguing that this would reduce the companies' clout in negotiations with major foreign upstream companies. On the other side, the UK, the Netherlands and the Scandinavian countries headed the alliance that backed the Commission proposal of further liberalization as necessary for increasing the security of supply. Full ownership unbundling would guarantee the independency of transmission system operators and bolster trade and investments in new infrastructure, pivotal to security of supply, according to these member states.

A deeper understanding of the differences comes when looking at the strategies pursued by the governments of Germany and like-minded allies

for securing their supplies from Russia. The German government has accepted Gazprom acquisitions of shares in national gas infrastructure in return for German acquisitions in Russia, based on the philosophy that cross-ownership will give joint commercial interests in ensuring stability in supply. The German government has accepted such company-level strategies and combined it with active bilateral diplomacy vis-à-vis Russia, illustrated not least by the event in 2006 when the then German chancellor Gerhard Schröder met with Russian President Vladimir Putin to witness a \$6 billion contract signed between Gazprom and E.ON and BASF to build a gas pipeline under the Baltic Sea linking Germany and Russia. Also the new grand coalition government in power from late 2006 celebrated the pipeline project. The co-operation project was later bolstered when ex-chancellor Schröder accepted an offer from President Putin to take up the post of chairman of the supervisory committee of the North European Gas Pipeline Company (NEGPC), which is to have overall responsibility for the building of the new pipeline. The majority shareholder in NEGPC is Gazprom, with 51 percent, while the German energy companies E.on and BASF/Wintershall each own 20 percent and Dutch Gasunie 9 percent.⁴⁴

The strategy supported by the other group of member countries, and by the EU Commission, is to bolster EU member state consumer power vis-à-vis external suppliers and speak with one united voice in energy-political talks with Russia. Accordingly, the de-integration of institutional links on the supply-side would be part of such a strategy, compatible also with the creation of a competitive market internally in the European Union. The bilateral cross-ownership strategy endorsed by the German and French Governments thus constitutes a key problem for the Commission's philosophy on how to tackle the security of supply issue.

When the Commission first proposed ownership unbundling in its 2007 strategic energy review, it also called upon the member states to avoid bilateral energy diplomacy vis-à-vis third countries and instead let the EU-level get a greater leverage in international energy talks. With many of the new member state governments eager to connect to the European Union and the NATO-umbrella after leaving the much hated planned economy and Soviet sphere of interest, the Commission obviously hoped for support from these in its strategy to combine market forces internally with a united voice in talks with Russia.

So far, however, the new member state governments appear as split on the issue. Planning economy structures are still visible in many of the countries' energy sectors, and some of the member states are still hesitant about surrendering their recently acquired independence to a new international structure limiting national sovereignty. Yet other countries are energy islands within the Union (in particular the Baltic States), lacking infrastructure to link up with the community and still totally dependent on energy supply from Russia, leaving them with a high level of vulnerability to take on policies that would 'bite the hand that feeds them'.

The challenge for the Commission has not lessened lately, with Gazprom increasing its influence in several member countries, possibly increasing

the resistance to vertical dismantling of Union-internal companies. Illustrating this point, Gazprom in January 2008 signed a deal with Austria's state-dominated company OMV to turn the Baumgarten gas transmission centre near Vienna into a joint venture, robbing the Commission-supported Nabucco pipeline project of its planned outlet for supply from non-Russian sources (*Eurasia Daily Monitor*, 2008).

5.5 Changes in Coalitions Advocating Different Policy Beliefs?

Our study gives not reason to conclude that strong coalitions exist in Europe successfully advocating in a *consistent way* free-market compatible solutions to greater energy-related environmental problems. On the contrary, the slid up the policy agenda of climate change and security of supply problems, coupled with European industrial competitiveness concerns appears to have cooled down the market enthusiasm of energy policy stakeholders. As such, there is nothing in our data suggesting that the Commission decision to press for more competition in the internal energy market reflected a broadening since 2003 of a coalition advocating competition and free-market solutions to public goods concerns.

Instead, we observe agents quite consistently advocating the opposite view, that free-market solutions would not serve European security of supply. The French government has always figured among the member states putting the brakes on in internal market policies on the argument that the free-market logic prevents opportunities for the government to secure public goods. The situation had not changed this time.

The German government has historically been a more half-hearted supporter of the internal energy market project. This time, however, the German Government more actively than before applied security of supply concerns for why it would not support ownership unbundling, referring also to barriers within the German Constitution for demanding private companies to sell-off their businesses. Security of supply-concerns evoked opposition to ownership unbundling also within many of the new member state governments.

In parallel, French members of the European Parliament, across political party lines, constitute another group that over the years quite consistently has argued that energy market liberalization is a threat to greater public good concerns in Europe. This time, French parliamentarians were joined by a far larger group of skeptics than back in 2003, including also German parliamentarians.

Even the group of member state governments and parliamentarians supporting radical liberalization through ownership unbundling did not show up with any strong *consistent* liberal-market position, shown by their resistance to the proposal of the Commission to harmonize at the EU-level a market-compatible trading instrument to assist the penetration of renewable energy in the EU. Most member state governments and parliamentarians oppose greatly the EU Commission efforts to limit the national freedom of choosing renewable energy support systems, despite of the obvious negative impact such non-harmonised schemes have on competition and trade in the internal energy market.

We also observe pragmatism rather than consistent advocacy of liberal-market ideas within non-state groups with stakes in energy and climate policy. The independent producers of renewable energy, represented at the EU-level by the European Renewable Energy Corporation (EREC) argued for ownership unbundling but against harmonization of European renewable energy support schemes. Eurelectric argued against ownership unbundling but for harmonization of renewable energy support schemes. Federations of energy-intensive industries argued for ownership unbundling but against efforts by the Commission to abolish long-term contracts in Europe.

What remains as rudiments of a larger advocacy coalition is the European Commission, a minor group of member state governments, notably the British, major parts of the economics profession, liberal think-tanks and else, political parties and individuals still devoted to spreading neo-liberal economic ideas. On the other side, we observe rudiments of a growing coalition arguing for stronger government control over the energy market. At the governmental level, France and Germany has institutionalized cooperative bilateral and trilateral energy talks with Russia, certainly not aimed at extending liberal economic market-thinking in Europe but rather how close vertically integrated ties could contribute to security of supply. The European Energy Council and Parliament discussions in front of the Commission launch of its proposal indicates that the coalition is wider and on the rise. On top of this, we observe a rise in number of academics arguing for feed-in tariffs rather than market-based instruments as the most appropriate policy instrument for deployment of renewables and media focusing on the relative success recorded in countries applying such non-market instruments.

Despite of no strong coalitions consistently advocating free-market ideals, we certainly observed that new issue networking was important in front of the Commission launching its proposal. We also found indications that some traditional relatively stable networks had less clout on the Commission than in earlier rounds of internal energy market policy changes.

Our study indicates a quite stable and close relationship developed over time between DG TREN and the electricity supply industry based on mutual dependencies. Representing the latter at the EU-level, Eurelectric was established with the specific mandate to influence internal energy market policy development, targeting first and foremost DG TREN as the main responsible within the Commission. DG TREN, on its side, was dependent on Eurelectric's technical knowledge on how specific policy proposals would affect the electricity supply system. Since Eurelectric is a comprehensive network in its own right, with members from all national supply systems, it has also been an important agent for testing the legitimacy of new proposals, crucial for getting these adopted by the member state governments.

Eurelectric thus had a unique position to influence Commission internal energy market policy proposals. This position was, however, considerably weakened in the period leading up to the third energy liberalization package proposal. As noted above, this was partly due to disagreements within Eurelectric and partly due to the new role of DG Competition in pushing internal energy market policies within the Commission.

In parallel, non-state stakeholders established *new* relationships with the Commission. Of particular importance were new ties established between DG Competition and a network of industrial energy consumer federations, also based on mutual dependencies. The industry federations opted strongly for policies that could bring down the high energy tariffs, ownership unbundling included. DG Competition, on its side, needed information on how energy-intensive industries were treated by the vertically integrated companies for its sector inquiry. The industry federations were in themselves networks of companies. In addition, these federations managed to unite in a greater network when establishing the Alliance of Energy Intensive Industries in 2004, uniting not only for ownership unbundling but speaking with one voice on the *broad* set of policies proposed in January 2007.

DG Competition had formerly been known as not strongly engaged in networking in energy matters, partly because it had a limited role in this policy field and partly because it cherished being perceived as independent from special interests. Although DG Competition would be expected to push radical liberalization, the new relationship with industrial energy consumers certainly strengthened the conviction of DG Competition that ownership unbundling was needed. While united on this issue, however, DG Competition and the energy-intensive industry in Europe are clearly at odds on other energy-related issues, such as the fate of long-term contracts, which the former wants abolished and the latter extended. Time will show whether the relationship built up will take the form of a longer-term network in which the agents manage to agree on solutions or whether the relationship will be embittered by too strong disagreement on other policy issues.

The relationships established included senior Commission officials through the work on the sector inquiry. One interviewee told how his federation invited DG Competition officials directly to the trading floor to let them observe how market manipulation actually took place. The relationships also included the very top leadership of the Commission, according to one of our interviewees in Brussels. Typical of this was the relationship built between fellow Dutch nationals of Commissioner Neelie Kroes, with informal meeting of likeminded persons across the energy consuming and energy supplying industries. Dutch producers are also pro-ownership unbundling. Also attending these informal meetings were British MEP Eluned Morgan, rapporteur on the issue in the Parliament. This indicates that national political division lines were somehow also matched within the Brussels bureaucracy. Looking at the most important persons that President Barroso and Commissioner Piebalg chose as senior officials in the Brussels policy-making machinery, we observe that they all had their origin in member states that had carried out comprehensive energy market deregulation. These included Irish *Catherine Day*, picked by Barroso as Secretary-General of the European Commission, and former Director-General at DG Environment; British *Christopher Jones*, deputy head of energy commissioner Piebalg's Cabinet and former Head of Unit A2 – Internal market in DG TREN, as well as British *Peter Vis*, member of Piebalg's cabinet, who had formerly been one of the architects behind the EU emission trading system during his service in DG Environment (Skjærseth and Wettestad, 2008:74; Nilsson et al., 2008).

Our empirical study lacks sufficient information to analyze with accuracy how these issue networks to the Parliament and member state government officials. Several of our interviewees stated, however, that the Parliament has always been particularly susceptible for lobbying by consumer interests, in addition to national interests. Several interviewees indicate that lobbying the Parliament became more important than in earlier internal energy market processes, in light of the clear support of ownership unbundling given already before the Commission launched its proposal. Within the Parliament, rapporteurs play particularly important roles in building relationships with the Commission. All the rapporteurs chosen for the third internal energy market package supported the Commission initiative; Italian La Russa for the Gas Directive; British Morgan for the Electricity Directive, Spanish Vidal-Quadras Roca for the regulation on access to networks for cross-border exchanges in electricity, Bulgarian Paporizov for the new Gas Regulation; and Italian Brunetta for the Agency for the Cooperation of European Regulators. None of them represented member states that voiced publicly opposition to the proposal. This vouched for tighter relationships with the Commission than if the rapporteurs at the outset had been sternly opposing the proposal.

Member state officials certainly linked up with larger networks as well. ERGEG, the co-coordinating mechanism of national energy regulators came out in favor of ownership unbundling. According to sources taking part in ERGEG meetings, the ERGEG majority also included national regulators of some member states where the government opposed ownership unbundling. The ERGEG director, Sir John Mogg, Chairman of the British regulatory agency Ofgem, had strong ties to the Commission after formerly serving as the Director General for the Internal Market and Financial Services.

To sum up, there exist strong indicators that senior Commission officials linked up with a comprehensive issue network working actively for ownership unbundling to be part of the final Commission proposal. The network included new and closer relationships with officials in DG TREN and DG Competition established through the co-drafting of the proposal. With its new focus on consumer interests in the internal energy market, this network would, if persisting, become a counterweight to the strong power that incumbent energy suppliers have traditionally enjoyed in internal energy market affairs.

This network resembled, however, nothing like a strong coalition consistently advocating free-market solutions to the larger energy-related problems facing the European Union. With such coalitions apparently in decline, the larger picture coming out of this study is clearly in line with that of Richardson (2000) that policy networks in Europe have become less stable and more issue-specific, making policy predictions less certain than before. This was the case also for the Commission when deciding to go ahead with mandatory ownership unbundling in its proposal. Despite of signals indicating that the Council would not accept this provision, the Commission may well, in light of shifting and unstable policy networks, have expected a fair chance for the proposal to survive at the other end of the process. Hindsight shows that this was not the case, however.

6 Conclusions

At the outset of this article, we asked whether the Commission proposal of a third energy liberalisation package reflected fundamental changes in the Brussels policy game from back in 2003, when the second liberalisation package was adopted, given the major step forward that the new proposal represented for energy market liberalisation in the European Union. Assisting our analysis, we put up a *supranational institutionalist*-inspired proposition that the proposal reflected a stronger independent will of the Commission to push energy market liberalisation. Another *intergovernmentalist-inspired* proposition put up claimed the proposal to reflect the will of member state governments. Finally, inspired by the *multilevel governance approach*, we set out to investigate a broader range of agents operating at different levels of decision-making, and their influence on the Commission proposal. Additional propositions were set up to check out changes in roles played by the Parliament, non-state stakeholders and agents outside the EU-system.

The analysis showed some interesting changes in the Brussels policy game. We conclude that the proposal reflected first and foremost a new will of the Commission under the leadership of President Barroso to push for greater competition in the internal energy market. This will was in turn reflected in the new and more prominent role given to DG Competition compared to the situation back in 2003. DG Competition was co-drafter of the proposal, while drafts written back in 2003 had been the sole responsibility of DG TREN. With a clearer mandate to push competition, DG Competition was instrumental in ensuring that ‘ownership unbundling’ was not scrapped from the package and in the scrapping of ‘regionalisation’ as an alternative first step strategy to reach a full-scale EU market. The latter strategy was endorsed by DG TREN back in 2003. The new will of the Commission and new role of DG Competition was reflected also in the investigations started against major vertically integrated companies for breaches of EU competition rules and the filing of some of these to the European Court of Justice. The will was strengthened by the clear signals given in advance by a majority of the Parliament that it would support mandatory ownership unbundling.

Concerning the role of member state governments, our analysis certainly indicates that the Commission was encouraged by those leading the way in energy market liberalisation by already having instituted ownership unbundling of national transmission system operators. Shortly before the launch of the proposal, however, the Commission was warned by a blocking minority of member states not to include ownership unbundling, indicating that the will of the member states was not decisive for the Commission proposal.

Inspired by the multi-level governance approach, however, we conclude that the Commission had reason to believe that some member states could change position on ownership unbundling. The new role active role of DG Competition included the investigation of and legal action against major vertically integrated transmission companies for breaches of EU Treaty competition rules. DG Competition expected these companies to

accept deals involving the sell off of transmission networks to avoid biting penalties. DG Competition also knew that lobbying by these companies at the national level was a major factor behind member state government disapproval of the provision on ownership unbundling. Hence, if DG was successful in pushing the companies, they would in the next round have less reason to lobby the national level against the provision and give way for the voices of the many national interest groups actually supporting ownership unbundling. The Commission was aware that national federations of powerful energy consuming industries, consumer organizations, renewable energy industry interests and environmental NGOs disagreed with national government positions, notably in Germany. Hindsight shows that the Commission was successful in striking a deal with German E.ON that included ownership unbundling but that this deal did not immediately convince the German government to change position on the issue.

Nevertheless, a *multi-level governance interpretation* of the proposal seems highly relevant, giving non-state agents an important role for understanding why the Commission retained ownership unbundling despite clear signals of disapproval from a blocking minority of member states.

Our study certainly supports that non-state agents also played a more direct role in lobbying the Commission proposal. Euro-federations of energy-intensive industries actively fed the DG Competition with information, central input for the Commission's decision to go ahead with ownership unbundling and for the investigations against specific companies carried out by DG Competition. The energy consumption-side lobbyists gained influence relative to the major energy supplier federations in the period 2003-2007, due partly to better co-ordination between different industry organizations (through the Alliance of energy-consuming industries established in 2004). More importantly, the major supply-side organizations were deeply split on the issue, reducing their thrust on the Commission. The supply-side organizations also lost influence after DG Competition took on such an active policy development role alongside DG TREN, the latter being the supplier side's key interlocutor with the Commission.

The relevance of using a multi-level governance perspective is also strengthened by evidence that forces outside the EU *indirectly* put their mark on the Commission proposal, illustrated by the last minute inclusion of the third party reciprocity clause. Demands for such a clause came from member state governments fearing that a sell-off of infrastructure would increase the strategic power of Russian Gazprom. Gazprom's owner, the Russian government, expressed strong opposition to 'ownership unbundling', stating it to increase the risks of long-term development of Russian gas resources and hence, to aggravate security of supply problems in Europe. *As such*, Russia influenced the Commission proposal in an indirect way, working through member state governments expressing fears of Russian dominance in EU energy supply.

Our study next asked whether a network perspective would add explanatory power to our study, acknowledging that agents working in larger networks could have greater thrust on the Commission. Also acknow-

ledging that the Commission proposal was part of a greater policy package aimed at dealing with climate change and security of supply problems in Europe, we asked whether the proposal reflected a strengthening from 2003 of a coalition advocating the *policy core belief* that free-market solutions are superior to government regulations in solving such greater energy-related problems. Ever since the late 1980s, different perceptions of whether market-based solutions are appropriate or not for achieving greater public good objectives have surfaced when new internal energy market-related policy proposals came up for discussion.

Our study gives not reason to conclude that strong coalitions exist in Europe successfully advocating in a *consistent way* free-market compatible solutions to greater energy-related environmental problems. On the contrary, the slid up the policy agenda of climate change and security of supply problems, coupled with European industrial competitiveness concerns appears to have cooled down the market enthusiasm of energy policy stakeholders. Even the group of member state governments, parliamentarians and non-state stakeholders supporting radical liberalization through ownership unbundling did not show up with any strong *consistent* liberal-market position, shown by their resistance to the proposal of the Commission to harmonize at the EU-level a market-compatible trading instrument to assist the penetration of renewable energy in the EU. The Commission, and a minor group of member state governments, notably the British, seems to remain the only political basis working together with representatives of the economics profession, liberal think-tanks, liberal-economic political parties and individuals to spread neo-liberal economic ideas for the European energy market. As such, there is nothing in our data suggesting that the Commission decision to press for more competition in the internal energy market reflected a broadening since 2003 of a coalition advocating competition and free-market solutions to public goods concerns.

Instead, we observe a growing number of agents quite consistently advocating the opposite view, that free-market solutions would not serve European security of supply. The French government and French Parliamentarians was this time joined by more governments and parliamentarians stating that the brakes should be put on in internal market policies since the free-market logic would prevent opportunities for the government to secure necessary public goods. German politicians were highly visible on this side together with those from several of the new highly import-dependent member states.

Security of supply figured as the public good most often discussed in relation to the proposal on ownership unbundling. Germany, France and several new member states formed an alliance against Commission demands for dismantling their national vertically integrated companies, arguing that this would reduce the companies' clout in negotiations with major foreign upstream companies. On the other side, the UK, the Netherlands and the Scandinavian countries headed the alliance that backed the Commission proposal of further liberalization as necessary for increasing the security of supply. Full ownership unbundling would guarantee the independency of transmission system operators and bolster trade and investments in new infrastructure, pivotal to security of supply, according to these member states.

Underlying the position of Germany and like-minded allies we observe a strategy to secure future gas supply from Russia through bilateral negotiations and cross-ownership between companies, based on the philosophy that this will bind companies in joint commercial interests to keep supply ongoing. The strategy pursued by the Commission, supported by the other group of member countries, is to speak with one united voice in talks to push liberalisation in Russian energy supply and as such, to create better opportunities for using the consumer power of EU member states.

Despite of no extensive coalition consistently advocating free-market ideals, we certainly observed that networking was important in front of the Commission launching its proposal. Relationships observed, specifically those between the energy-intensive industry and Commission officials, appeared as issue specific, focused on the promotion of specific provisions of the proposal and not representing any new stable constellation of actors. We also found indications that some traditional relatively *stable* networks had less clout on the Commission compared to earlier rounds of internal energy market policy changes. This was manifested notably in weaker ties between the electricity supply federation Eurelectric and DG TREN, due to the new role of DG Competition in pushing internal energy market policies within the Commission.

The larger picture coming out of the study was therefore that policy networks in the European Union have become less stable and more issue-specific, making policy predictions less certain than before. In light of such shifting and unstable policy networks, the Commission may well have expected a fair chance for ownership unbundling to survive in the further legislative process, despite of the negative signals from the Council before launching the proposal.

Summing up then, the policy-formulation stage of the new internal energy market policy package was characterized by a Commission with higher will than before to push market opening. Through knowledge about the multi-level characteristics of European policy-making, the Commission hoped that the proposal on ownership unbundling would survive the further legislative process. Current evidence indicates that so will not happen due to major opposition by a blocking number of member state governments. *As such*, intergovernmentalist-inspired interpretations may still be highly relevant for the analysis of EU policy-making.

Notes

¹ The policy package included: Commission of the European Communities (2007a;2007b;2007c;2007d;2007e)

² Another similar approach is 'epistemic communities' focusing on the role of 'networks of knowledge-based experts or groups with an authoritative claim to policy-relevant knowledge within the domain of their expertise' (Haas, 1992). Network members hold a common set of causal beliefs and share notions of validity based on internally defined criteria for evaluation, common policy projects, and shared normative commitments' (Haas, 1992).

³ Electricity consumers representing at least 25.3 per cent of total national consumption were given rights to access by 1997, increasing to 28 per cent in 2000 and 32 per cent in 2003. Member states were left free to decide on how fast and effective reforms would be carried out for gas consumers (Stern, 1998).

⁴ Article 25 (1) of the Electricity Directive and Article 27 of the Gas Directive, European Parliament and the Council (1996; 1998).

⁵ The report showed that some member states had not adapted national legislation to the directives. Several countries showed little progress in the rate at which customers were entitled to switch suppliers. For several countries, failure in ensuring fair access to transmission and distribution networks was recorded. Moreover, the reports showed that some member states had not even set deadlines for full market opening. Implementation 'failures' and asymmetries were generally greater for the Gas Directive than for the Electricity Directive.

⁶ Information received in interview with senior Commission official, February, 2008.

⁷ *Euractiv* (2007) 'EU states reject breaking up energy firms', Thursday 7 June 2007.

⁸ Bundesministerium für Wirtschaft und Technologie, Presse-mitteilung, Energy Council discusses issues of the internal market for electricity and gas, Berlin, 6 June, 2007.

⁹ In 1996, the Dutch appeal court, taking the Court of Justice ruling as its base, found that the public service obligations presented by the generators were not sufficient grounds for imposing an import monopoly, and thus the generators had acted contrary to the Treaty's provisions (Lyons, 1998:34).

¹⁰ The report stated that one of the most significant barriers to the internal electricity market was '[t]he high level of market power among existing generating companies associated with a lack of liquidity in wholesale and balancing markets which impedes new entrants' (p. 4). The conclusion for the gas market was no less explicit. 'Concentration of gas production and import in a few companies and slow development of gas trading hubs which often means that new entrants find it very difficult to buy wholesale gas on reasonable terms, although this situation could be significantly improved with better arrangements for cross border trade and the creation of a fully integrated single market' (p. 5).

¹¹ Information received in interview with senior Commission official, February, 2008.

¹² Information received in interview with senior Commission official, February, 2008.

¹³ Information received in interview with senior Commission official, February, 2008.

- ¹⁴ Information received in interview with senior Commission official, February, 2008
- ¹⁵ Contribution to the EU Energy Strategic Review, urgent measures are required to improve the functioning of electricity and gas markets, The Alliance of Energy-Intensive Industries proposes a set of solutions, Brussels, 22nd September 2006, retrieved at www.eurometaux.org/files/AllEnergy09.06-141818A.pdf
- ¹⁶ Information received in interview with an industrial Euro-Federation representative, February, 2008.
- ¹⁷ Information received in interview with an industrial Euro-Federation representative. February, 2008.
- ¹⁸ Information received in interview with senior Commission official, February, 2008.
- ¹⁹ Information received in interview with senior Commission official, February, 2008.
- ²⁰ *Economist*, March 6, 2008, www.economist.com/business/displaystory.cfm?story_id=10808897
- ²¹ *EurActiv*, Monday 29 July, 2008, Vattenfall power grid sale buoys EU
- ²² *EurActiv* (2007) *MEPs call for dismantling of energy giants*, Wednesday 11 July, 2007
- ²³ ENDS Environment Daily, *MEPs push for EU power source transparency*, ISSUE 1178 – Thursday 14 March 2002
- ²⁴ Information received in interview with senior Commission official, February, 2008.
- ²⁵ Centre for Public Scrutiny (2006) *Rapporteurs in the European Parliament*, Research Report No. 4, September, 2004, London: Centre for Public Scrutiny, www.cfps.org.uk/pdf/publications/48.pdf.
- ²⁶ *BusinessWeek*, 'EU Energy Giants Could Face Breakup By '09', 11 January, 2007, www.businessweek.com/globalbiz/content/jan2007/gb20070111_986665.htm
- ²⁷ *ibid.*
- ²⁸ *Council of the European Union*, 'Presidency Conclusions', Brussels, 8/9 March 2007, 7224/1/07 REV 1 17
- ²⁹ *Euractiv* (2007) 'EU states reject breaking up energy firms', Thursday 7 June 2007.
- ³⁰ *ibid.*
- ³¹ *Wirtschaftsvereinigung Stahl* (2006). Policy statements by the steel industry in Germany for Germany's Presidency of the EU Council of Ministers during the first half of 2007, Düsseldorf, October 2006, www.stahl-online.de/medien_lounge/Hintergrundmaterial/ForderungenEURatspraesidentschaftENGL.pdf
- ³² *Ministry of Industry and Trade of the Czech Republic*, 'Energy Council has reached a compromise in unbundling', Press Release 6 June 2008
- ³³ *RIA Novosti*, 'EC to block Russian energy companies from EU market', 30 August, 2007.
- ³⁴ *Euractiv*, Friday 12 October 2007, Drop long-term contracts or face sanctions, Commission tells energy firms

³⁵ *Business Europe*, Position on long-term contracts (LETCs) between energy users and suppliers, Position paper, 29 April 2008

³⁶ European Parliament, Debates, Tuesday 12 March 2002, Strasbourg.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Commission of the European Communities (2000b). The Green Paper presented risks of short-term and long-term supply distortions, based on the trends of EU's ever-widening dependence on energy imports, expected to rise from 50 per cent of its energy requirements to 70 per cent the next 20 to 30 years if no countermeasures were taken. Energy imports represented in 2000 6 per cent of total imports. 45 per cent of oil imports came from the Middle East and 40 per cent of natural gas came from Russia.

⁴³ BP Statistical Review of World Energy 2007

⁴⁴ NEGPC web page www.nord-stream.com/en/our-company.html

Appendix I: Stakeholder Interviewees

- Cloquet, Daniel**, Director, Industrial Affairs, *BusinessEurope*, Brussels.
- Dahl, Agnethe**, Counsellor, Environmental Policy, the *Mission of Norway to the EU*, Brussels.
- Ek, Lena**, Group of the Alliance of Liberals and Democrats for Europe, Member of the Committee on Industry, Research and Energy and Temporary Committee on Climate Change, *the European Parliament*, Brussels.
- Engebretsen, Marit**, Counsellor, Energy Policy, the *Mission of Norway to the EU*, Brussels.
- Erik Berggren**, Senior Adviser, Legal Affairs Department, *BusinessEurope*, Brussels
- Geron, Anne-Malorie**, Head of Unit, Markets, *Eurelectric*, Brussels.
- Hellner, Cecilia**, Secretary-General, *European Transmission System Operators (ETSO)*, Brussels.
- Jeekel, Robert Jan**, Trade & Economic Affairs Manager, *Eurometaux*, Brussels.
- Kjølbye, Lars**, Head of Unit Antitrust, Energy & Environment, DG Competition, the *European Commission*, Brussels.
- Liese, Peter**, Group of the European People's Party (Christian Democrats) and European Democrats, Member of the Committee on the Environment, Public Health and Food Safety, substitute member of the Temporary Committee on Climate Change, the *European Parliament*, Brussels.
- Lobrano, Guido**, Adviser, Legal Affairs, Internal Market state support and competition, *BusinessEurope*, Brussels.
- Longva, Petter**, Deputy Director, *Hydro Energy*.
- Oprea, Carmen**, Regulatory and Policy Associate, *European Federation of Energy Traders (EFET)*, EU Liaison Office, Brussels.
- Supponen, Matti**, Electricity & Gas Unit, DG TREN, *European Commission*, Brussels.
- Syversen, Olav Aamlid**, Advisor, *StatoilHydro EU Affairs Office*, Brussels.
- Thorvik, Arve**, Director, *StatoilHydro EU Affairs Office*, Brussels.
- van Stiphout, Mark**, Policy Officer, DG Energy and Transport Electricity & Gas Unit, *the European Commission*, Brussels.

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