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ICN UCWG WORKSHOP

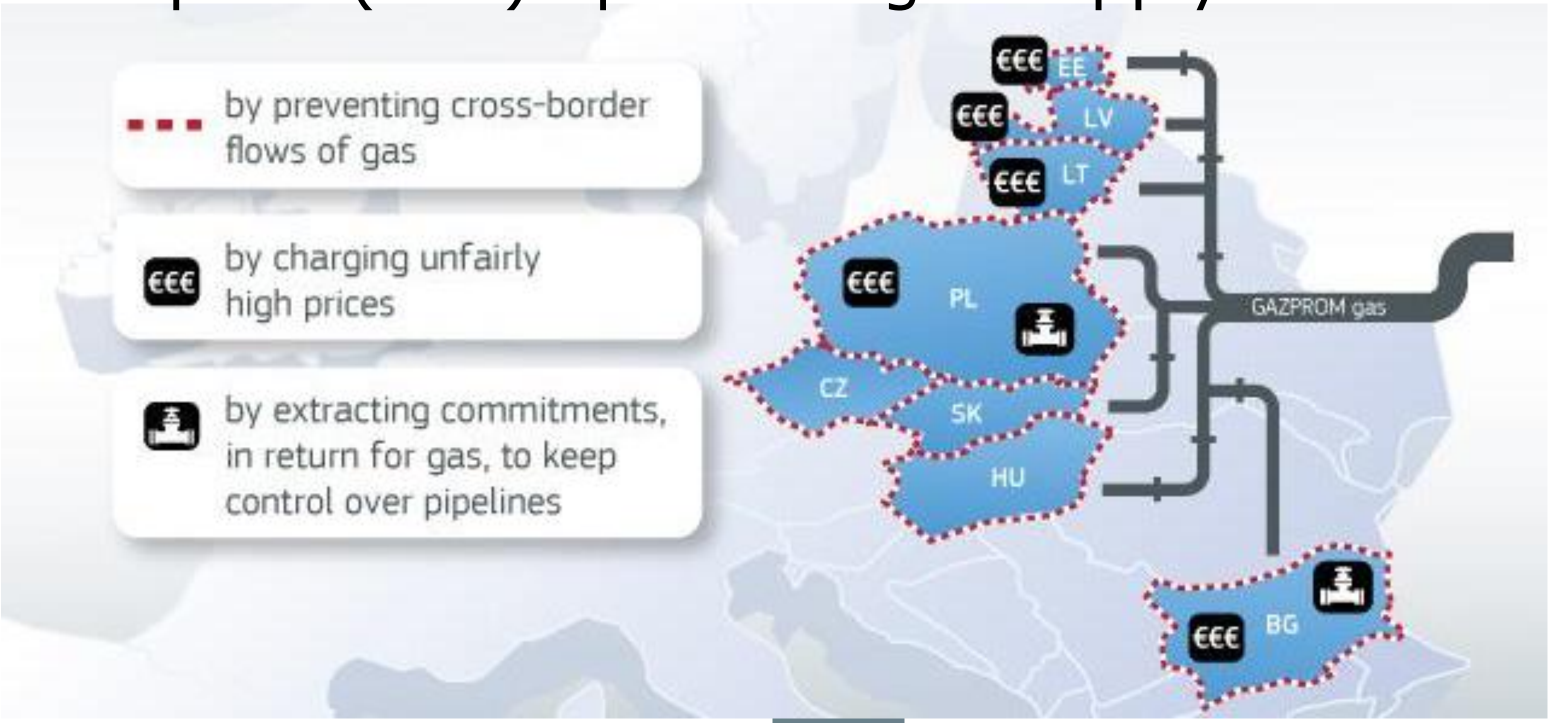
Excessive pricing in the Gazprom case

Evaluating the conduct and remedies

Dr Réka Horváth
Policy officer
Antitrust case support and policy unit
DG Competition, European Commission

The Gazprom case

Statement of Objections: Gazprom may have abused its dominant position in Central and Eastern European (CEE) upstream gas supply markets:



Pricing case in a nutshell

Significant price differences in Central and Eastern Europe compared with Western Europe (historically oil-indexed gas contract prices)

High barriers to entry also on the medium-to-long-term

'Traditional' *United Brands* analysis

Innovative remedy: market-based solution

Reasons for intervention

No possibility to challenge exclusionary conduct alone

Intervention would not damage the dynamic competitive process

- **High prices not justified by risk taking / past investment**: dominance gained under protection of special/exclusive rights; pipelines financed by state resources
- **Market will not correct itself**: prices unlikely to attract entry in a timely manner due to lack of interconnection

No possibility of timely regulatory solution

Assessment of unfair pricing - facts

Prices in five CEE countries were 170% higher than actual costs incurred in 2009-2013

Prices in five CEE countries were higher than competitive benchmarks in 2009-2014:

- 22-40% higher than gas hub prices
- 9-24% higher than Gazprom's German contract prices

Assessment of unfair pricing

Prices in five CEE countries were considered **excessive** compared with actual costs incurred and **unfair** compared with competitive benchmarks

Oil-indexation may have contributed to excessiveness (no relation to economic value of gas)

Pricing commitments – new price revision clause (part of package)

Trigger: if price deviates from competitive Western benchmarks (including liquid hubs)

Guidance for new price: taking into account the price in competitive Continental Western European gas markets (including liquid hubs)

Procedure: higher frequency, effective arbitration

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Summary of pricing remedy

Empowers customers with a tool to ensure that oil-indexed price remains in line with competitive benchmarks

Risks of oil-price-indexation **eliminated**

Market-based tool without need for the Commission to act as price regulator

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Back-up slides

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EU test: *United Brands* (1978)

- Price is unfair/excessive if it has no reasonable relation to the economic value of the product
- Two-prong test:
  1. Whether the difference between the price and the actual costs incurred is excessive
  2. Whether the price is unfair a) when compared with competing products or b) in itself
- Other ways to find unfair prices may be possible

***Latvijas Autoru apvienība* (2017)**

- Excessive prices can be established without comparing price-cost (without first prong of *UB*)
- It is sufficient to compare the price with relevant benchmarks:
  - selected in accordance with **objective, appropriate and verifiable** criteria; and
  - comparisons on a **consistent basis**
- The difference between the compared prices should be appreciable, that is, **significant and persistent**
- The dominant company is entitled to justify its prices by reference to objective factors