ANALYSIS OF COMPETITION ON THE EUROPEAN NATURAL GAS MARKET

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Abstract:

This article addresses aspects of competition in the European gas market and more precisely analyzes the abuse of Gazprom's dominant position in preventing the free flow of gas in the Member States of the European Union and the unfair prices. In line with the European principle of freedom of movement for goods, services, persons and capital, the European Commission adopted three directives, approved in 1998, 2003 and 2009, by introducing competition on a market which had been closed down until then. From a macroeconomic perspective, there have been significant theoretical and empirical evidence suggesting that the liberalization of the European gas market has positive effects on the energy industry in terms of lower prices and security of supply. But competition law in the European energy sector is not always properly applied and consumers are discouraged in terms of implementing the legislative and regulatory framework. In accordance with art. 102 of the Treaty on the Functioning of the European Union (TFEU), EU countries importing natural gas must benefit from transparent, fair pricing contracts. However, in some cases, abusive practices have been used for gas importers in central and eastern Europe.

Keywords: *Abuse of dominant position, competition, natural gas market, regulation*

JEL Classification: *P18, Q41*

1. Introduction

In the last decades, the European energy system has undergone a series of structural and functional transformations in order to ensure sustainable, affordable and competitive energy for all citizens.

Against the backdrop of falling primary energy production and increasing consumption, EU Member States have begun to become more and more dependent on the supply of imported natural gas, contracts concluded over several decades, where the price was set according to the price oil.

The European Commission adopted in November 2010 the Energy 2020 - A Strategy for a Competitive, Sustainable and Secure Energy Strategy, which defines energy priorities for a 10-year period, and proposes measures that can be taken to address a range of challenges, including Creating a competitive and secure supply market, strengthening leadership in technology and effective negotiation with international partners.

2. European regulations on the internal gas market

In the early 1990s, in the European Union, national energy markets were dominated by state-owned enterprises with a monopoly over all activities. These markets were very poorly interconnected.

The European Commission has begun to challenge the existence of monopolies and exclusive rights in the gas and electricity industry on the grounds that it has made it impossible to have an integrated European market. However, at that time, there was no real chance of obtaining the agreement of all or a qualified majority of Member States to liberalize energy at Community level.

For this reason, the Commission decided to use the Treaty articles on competition law and the rules on free movement, forcing Member States to abandon these monopolies (Jones, C. and Webster, W., 2006, p. 2).

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In 1992, the Treaty of Maastricht completed the completion of the Single Market. This treaty, also called the Treaty on European Union, brought a novelty for the energy sector, widening the scope of the subsidiarity principle, valid until that date only for environmental issues. The subsidiarity principle is of particular importance in the field of energy, because it allows the Commission to harmonize the ratio of forces between the Member States and the Community institutions by using the Directive as the main instrument. The legal basis for this process has been developed by the European Commission as a set of European directives and regulations.

The term "liberalization" refers to Article 3 (1) (b) of the Treaty on the Functioning of the European Union (TFEU), which provides that "the Union shall have exclusive competence ... to establish the rules of competition necessary for its operation".

The first package (Directive 96/92/EC on common rules for the internal market in electricity and Directive 98/30 / EC concerning common rules for the internal market in natural gas) produced an initial market for gas and electricity.

The first directive did not provide for effective regulation, did not require the designation of a regulatory authority or set public prices. Instead, with the introduction of competition in the supply phase, she tried to address these vital issues by providing general objectives and continuing without specifying how they could be reached (Jones, C. and Webster W., p. 10).

The first Directive was replaced in 2003 by a second legislative package (Directive 2003/55/ EC) on the entry of new gas market suppliers in the Member States and allowed consumers to choose their own energy suppliers. The Second Directive requires the Commission and national regulators to create dominant companies and asks them to take measures to alleviate their domination. They only report on "dominance of the market" (Thomas S., 2005, p. 13).

In April 2009, a third package was adopted, modifying the second package and pursuing he further liberalization of the internal market for electricity and natural gas (Energy Package 3).

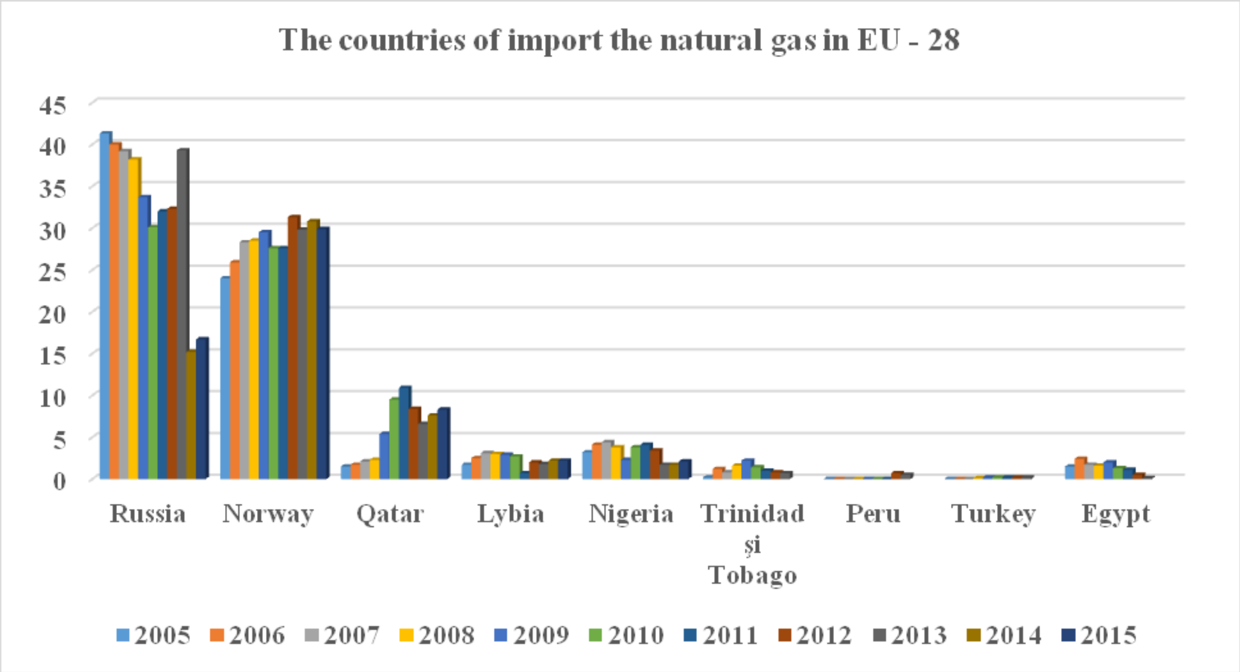
3. Import of natural gas into the EU member countries

At present, natural gas is the second most important fuel in the European Union. The European Commission launched in 2000 its third Green Paper "Towards a European strategy for the security of energy supply". The Green Paper presents worrying data about the dependence on gas imports from sources outside the European Union.

A quarter of the European Union's energy consumption is natural gas, with 58% coming from import. Of this, 42% comes from the Russian Federation. Approximately 80% of European Union gas imports from the Russian Federation pass through Ukraine.

The origin of energy imports into the European Union has changed somewhat in recent years, so Russia has maintained its position as the main gas supplier. Russia's natural gas export to the EU 28 has fallen from 41.8% to 30, 1% between 2005 and 2010, but this trend was reversed with rises that subsequently led to a 39.3% share in 2013. Norway remained the second largest importer of crude oil and natural gas in the European Union by 2014, when it surpassed Russia (Figure 1).

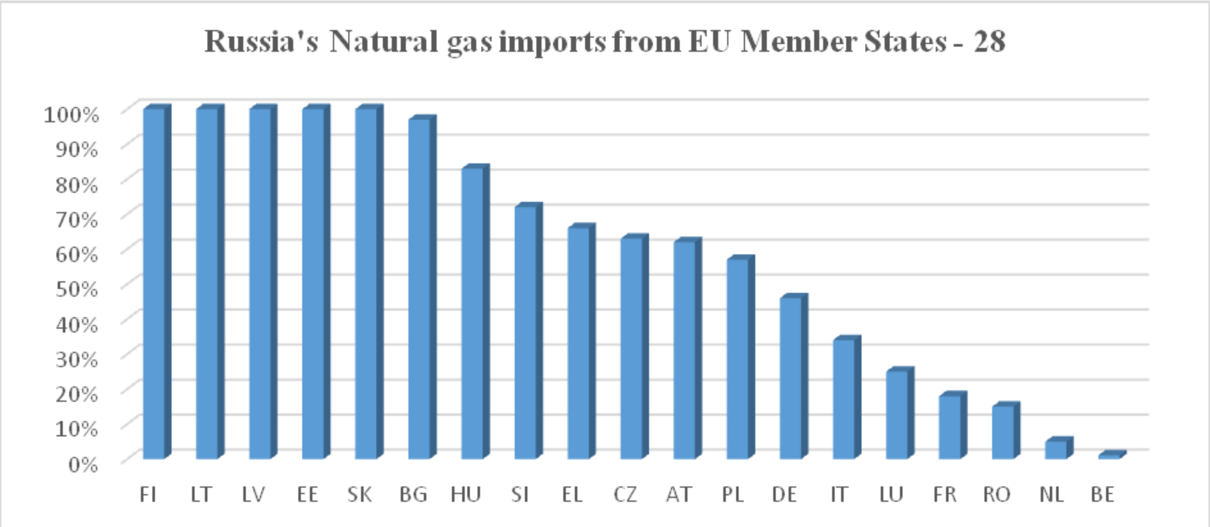
Figure 1: Countries importing natural gas into the European Union (%)



Source: Eurostat

The Member States most dependent on gas imports from Russia account for only 7% of total demand. Latvia, Lithuania, Estonia, Finland and Slovakia are totally dependent on Russia, while Bulgaria, Hungary, Slovenia and Greece are dependent on Russia for more than two-thirds of consumption. These countries are particularly vulnerable to disturbances in the supply of Russian gas (Figure 2). However, their collective need represents only about one-fifth of gas exports from Russia to Europe and the volume is equivalent to one third of the EU's gas stock.

Figure 2: Russia's natural gas imports into the EU - 28 (%)



Source: Eurostat, Eurogas

4. Materials and methods

Competition policy plays a fundamental role in the completion of the Single Internal Market. The removal of trade barriers requires the development and implementation of a new set of transparent rules for regulating competition (Berinde M., 2003)

.In accordance with Article 102 (ex - Article 82) of the Treaty on the Functioning of the European Union (TFEU), it is incompatible with the internal market and prohibited, in so far as it may affect trade between Member States, any abuse by one or more undertakings Of a dominant position on the market or part of it.

Article 102 prohibits abuse of a dominant position, not only its existence. Excessive concentration may favor situations in which an enterprise abuses its dominant position in an unfair manner or on the basis of (very low or very high) prices, marketing conditions or the way they treat consumers.

In 2015, Gazprom hindered competition in the gas supply markets in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia by imposing territorial restrictions, export bans, destination clauses, pursuing an unfair pricing policy.

The supply of gas to Bulgaria and Poland was conditional on obtaining independent commitments for the South Stream and Yamal gas transmission infrastructure. In 2011, several companies in ten EU Member States opened formal proceedings against Gazprom for possible abuses of the dominant position in the upstream power markets of the Central and Eastern European countries: hindering the free flow of gas to the Member States; has hampered the diversification of gas supply; has imposed on its customers unfair prices.

However, the Russian government, considering the investigation to be both political and commercial, has adopted an executive order prohibiting Gazprom from providing information about its commercial activities.

In accordance with Article 9 of Regulation 1/2003, the European Commission can make commitment decisions. This is a quick way to restore effective market competition. In line with the commitment decisions, the Commission does not have to prove antitrust or impose fines. It expresses its concern and the parties can present their commitments to address these issues. If the Commission, after consulting the market participants, considers that these commitments are sufficient, it shall take a decision that will become legally binding.

In 2016, Gazprom presented its commitment proposal in accordance with Art. 9 of Regulation 1/2003 for a period of eight years.

5. Results and discussions

Commitment is a procedure used in Europe, used in certain situations, to stop an anti-competitive practice and to prevent the emergence of similar practices, offering (re) fast and efficient introduction of competition on the market.

Commitments are usually valid for a certain period of time, but if they are broken, companies may be fined. This is an important step in adopting rules, on the one hand, to protect consumers from abusive practices and, on the other hand, to provide companies with the possibility of a possible recovery of claims.

In this respect, Gazprom has pledged to remove all contractual barriers to the free flow of gas in the central and eastern European gas markets.

Commitments accepted have been monitored for a period determined by the European Commission's decision, verifying that the competition authority or an agent designated for that purpose (Decision 2003/796 / EC) has fulfilled them.

In 2017, the European Commission announced the fulfillment of Gazprom's engagements.

These commitments allow the free movement of gas in Central and Eastern Europe at competitive prices.

During the procedure, the European Commission may, upon request or its own investigation, reopen if irregularities are found.

The starting point of the fine is the percentage of the company's annual sales for the infringement. This is then multiplied by the number of years and months, as long as the violation occurs. Fines can be increased (for example if the crime is repeated) or low (limited involvement). The maximum fine is limited to 10% of the company's total turnover.

6. In conclusion

Achieving a competitive and functioning internal gas market in line with the legislation on the third energy package and the Treaty on the Functioning of the European Union is a very complex process.

Constrained by the Commission, the EU Member States have overcome the slow reluctance to open energy markets and have been restructured, introducing competition to get cheaper natural gas and improving the efficiency of public services.

Competition policy, in line with EU rules, is not an end in itself, but a necessary condition for the internal market. The objective is to allow the establishment of a system to ensure that competition is not distorted within the internal market.

A State which has been engaged in anti-competitive conduct may be subject to fines imposed by the Commission under Regulation 1/2003.

Several companies in ten EU Member States have opened formal proceedings against Gazprom for possible abuses of a dominant position in the gas supply markets of the Central and Eastern European Member States: hindering the free flow of gas in the Member States; Has hampered the diversification of gas supply; Has imposed on its customers unfair prices.

In order to restore effective market competition, the European Commission has approved a commitment decision from Gazprom.

The European Commission has monitored the commitments accepted for a specified period by verifying that the competition authority has fulfilled them.
In 2017, the European Commission announced the fulfillment of Gazprom's engagements.

These commitments allow the free movement of gas in Central and Eastern Europe at competitive prices.

The existing legislative framework at European level in the natural gas sector provides regulatory and functioning framework for competition, transparency and consumer protection.

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