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Government review of the balance of competences between the United Kingdom and the European Union: call for evidence on Competition and Consumer Policy review

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

We welcome the opportunity to respond to the consultation on the Balance of Competence review "Call for Evidence on Competition and Consumer Policy".

Our comments are confined to our experience of the UK and EU regimes regarding their treatment of the energy sector. Consumer policy in energy is contained within primary legislation such as the Utilities Act 2000 and the licences to supply gas or electricity. They are specific to energy activity such as information on consumer bills or meter reading requirements. In this context we will not comment on consumer policy. However, we do note that since there is an established body of legislation in each of the Member States, based on national expectations of service and willingness to pay, it might be very difficult to harmonise consumer policy across Europe in the energy sector.

EDF Energy supports the current balance of competence between the EU and UK. Competition policy is a well established supranational policy even before the Treaty of Rome with the European Coal and Steel Community Treaty signed in 1952. While the policy has undergone considerable reform over the last 62 years, there has been no real challenge concerning its administration at the European level. As the policy is fully harmonised across Europe there are no issues with differences in policy design between Member States.

In summary, we believe that:

- The key advantages of a supranational policy are:
 - The benefit of shared case law and understanding of competition analysis.

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- The development of competition policy in Member States which previously did not have a policy.
 - There is more certainty of outcome over the cases across regimes.
- Where there is a case for reform, the issues are similar to those we would have with a national regime. As always, there is a risk of different interpretations of the same body of case law when it is applied at the national level.
- An important issue for energy companies is that competition policy has to align with energy policy objectives.
- The UK should not passively accept European policy developments but continue to be influential in developing good policy practice. In this sense the EU is only as good as the contributions of its Member States.
- The widespread adoption of competition policy around the world has meant that there are fewer concerns about the competitive advantage of European firms with respect to economies than in the past.

Our detailed responses are set out in the attachment to this letter.

I confirm that this letter and its attachment may be published on BIS's website.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Angela Pearce".

Angela Pearce
Corporate Policy and Regulation Director

Attachment

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EDF Energy's response to your questions

Impact on the national interest

Q1. What evidence is there that EU action in the area of Competition, including State Aid, and Consumer policy advantages the UK?

The key advantage of having a unified European competition policy is that this should eliminate competitive advantages placed on firms as a result of differences between national competition regimes. Before harmonisation, where competition policy existed there was scope for public interest criteria and the politicisation of some contentious decisions which meant that firms could not expect consistent treatment across different regimes. Furthermore there was scope for what was then known as "regime shopping" between different jurisdictions, e.g. for merger control.

Other advantages include the benefit of shared case law and understanding of competition analysis. Furthermore the development of competition policy in Member States which previously did not have a policy is advantageous. Finally, there is more certainty of outcome over the cases across regimes.

Q2. What evidence is there that EU action in these areas disadvantages the UK?

The disadvantages are similar to those of any national competition regime, namely:

- Uncertainty over new theories of harm developed by the Commission which could not be anticipated at the beginning of an investigation.
- Confirmation bias in unitary authorities, where evidence is filtered to lead to a specific conclusion at the expense of evidence to the contrary.
- Incorrect or poor application of economic theory to a novel situation.
- Poor understanding of the sector under investigation, in particular the economics of the industry, may not fit into the standard economic model.
- Interpretation of the impact on cross border trade of a particular activity.

As always, there is a risk of different interpretations of the same body of case law.

Q3. Are there any other impacts of EU action in these areas that should be noted?

The alignment of competition policy has reduced overall compliance costs and aligned reporting procedures.

Q4. To what extent is EU action in these areas necessary for the operation of the single market?

Competition policy is vital for the development and policing of the single market at the supranational level.

5. How does the EU's competence in these areas impact upon the UK's global competitiveness?

We find it unlikely that having an EU competition policy would reduce UK competitiveness.

The widespread adoption of competition policy across the world means that this is now becoming less of an issue than it was when there were major economies which did not have a policy. The key issue now revolves around a proportionate and considered enforcement policy.

Scope and effect of particular powers

Q6. How have the EU's mechanisms for delivering a single market worked in these areas of competences?

The supranational control of competition policy has worked well as it is the only feasible means of delivering a single market. This required the transfer of powers between member states and the Commission and the harmonisation of national policies. In practice this has meant the adoption of European case law leading to more certainty of outcome across Europe.

In the energy sector there has been scope for conflicting objectives of developing the single market and interventions necessary to meet emissions targets. This is because if the market itself cannot value an externality, competition policy may not be able to correct it in the same way it can provide remedies for breaches of Article 81 and 82 of the Treaty.

Differences in implementation

- Q7. To what extent has the EU created more or less consumer protection provisions for UK consumers compared to the UK's domestic agenda? What are the effects of this?**

No comment. Energy companies have detailed consumer protection measures in utility law and supply licences.

- Q8. To what extent is the UK more or less rigorous in enforcing its consumer and/or competition, including State Aid, rules compared to other Member States? What are the effects of this?**

No comment. EDF Energy has no experience of other jurisdictions.

Future options and challenges

- Q9. How might the UK benefit from the EU taking more action in these areas?**

We see that the balance is broadly correct and so believe that no further action is necessary in terms of distribution of powers. We do, however, see a standing role for the UK in supporting good practice in competition policy and more generally in promoting the benefits of competitive markets.

- Q10. How might the UK benefit from the EU taking less action in these areas, or from more action being taken at the national rather than EU level?**

We do not see a case for repatriation of powers. As argued in question 9, the UK Government should make the case for improving competition policy.

- Q11. How could action in these areas be undertaken differently e.g.**
- **Are there ways of improving EU legislation in these areas, e.g. revision of existing legislation, better ways of developing future proposals, or greater adherence to the principle of subsidiarity and proportionality?**
 - **Are there ways the EU could use its existing competence in these areas differently which would deliver more in the national interest?**

We do not see any reason for the existing arrangements to require revision from a balance of competence perspective. However, this is not to say that we expect a strategy that is passive from the UK competition authorities. We would expect the UK to contribute to the development of EU policy.

Q12. What future challenge/opportunities might we face in these areas of competence and what impact might these have on the national interest?

The policy is effective at ring fencing national interest issues, particularly in merger policy.

General

Q13. Are there any general points you wish to make which are not captured above?

As standards and expectations of good governance evolve, it might be that an independent European competition agency could be an option that better reflects the requirement for independent competition agencies in the Member States.

EDF Energy
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