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COMMENT

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The antitrust dispute between the European Commission and Gazprom: Towards an amicable deal

The European Commission has endorsed Gazprom's commitments to revise its monopolistic practices in East-Central Europe, which would allow a better integration of the EU's energy market. The proposed settlement places the EU-Russia energy relationship on a more commercial footing.

In March, the European Commission and the Russian energy company Gazprom reached a preliminary agreement on settling an anti-trust dispute that had begun in 2012. The European Commission suspected Gazprom of abusing its dominant position as gas supplier in eight East-Central European EU member states (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). In accordance with its obligation to monitor the correct application of EU competition rules, the Commission had launched an investigation concerning Gazprom's activities. In April 2015, upon the initiative of EU Competition Commissioner Margrethe Vestager, the Commission sent a statement of objections to Gazprom, detailing its concerns.

More specifically, the Commission believed that Gazprom had abused its dominant market position in three ways. Firstly, Gazprom had imposed territorial restrictions in its supply agreements, which hindered the cross-border flow of gas, thereby leading to the fragmentation of the EU's internal gas market. Secondly, the company was suspected of exploiting market fragmentation in order to impose unfair prices in Bulgaria, Estonia, Latvia, Lithuania and Poland. Unfair pricing was partly due to Gazprom's

practice of indexing gas prices in supply contracts to a basket of oil product prices. Thirdly, the company was accused of making gas supplies to Bulgaria and Poland conditional upon obtaining unrelated commitments regarding the access to, or control of, pipeline infrastructure.

Formal talks to settle the antitrust dispute began in September 2015. Despite the tensions in the broader EU-Russia relationship, negotiations made considerable progress. In March 2017, the European Commission announced that it was satisfied with Gazprom's commitments to address and resolve its concerns regarding anticompetitive practices. Hence, it made the commitments available for the comments and feedback of interested stakeholders until early May 2017. Thereafter, the Commission can adopt a decision making the commitments legally binding on Gazprom.

The Russian company has agreed to remove all contractual barriers to the free flow of gas in East-Central Europe, as well as to take steps enabling a better integration of the regional markets. These include measures to increase gas flows to the Baltic states and Bulgaria, which currently lack interconnections with their EU neighbours. Moreover, Gazprom has agreed to revise contractual clauses in order to ensure

competitive gas prices, linked to those paid at Western European hubs (which are better diversified and thus reflect broader market trends). Finally, the company has agreed not to seek advantages concerning the control of pipelines through its dominant market position.

Gazprom's commitments address the main concerns raised by the Commission in the antitrust case. Most likely, the company took a conciliatory stance in order to avoid a fine and a lengthy court case with an uncertain outcome. In the foreseeable future, Gazprom will remain a key provider of gas for the EU; their interdependent commercial relationship will run more smoothly if disputes are resolved through negotiations rather than lengthy judicial procedures. The EU still has the option of imposing financial penalties on Gazprom if the company breaks its commitments. In this case, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to prove an infringement of the EU's antitrust rules.

In its announcement about the agreement with Gazprom, the Commission also stated that effective competition in the Central and Eastern European gas markets not only depends on the enforcement of EU competition rules, but also on

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investments in gas supply diversification, well-targeted European and national energy legislation and their proper implementation. This means that, in order to access energy at lower prices, the concerned member states also need to allocate funds to the development of import diversification infrastructure, or to accelerate their transition to renewable energy sources.

Some media reports have speculated that the Commission's positive reaction to Gazprom's commitments may pave the way for new Gazprom-led projects, such as Nord Stream 2. However, while the resolution of the antitrust case will lead to a less contentious energy relationship, the issue is not tied to the Nord Stream 2 project (the pipeline was not among the topics addressed by the Commission's investigation). Similarly, the antitrust case is not (and should not be) linked to political developments concerning other aspects of the EU-Russia relationship, as this would undermine the impartiality and credibility of EU competition rules.

The agreement between the Commission and Gazprom on settling the antitrust case is positive news for both sides, given the current interdependence of Russia and the EU in the field of energy. Energy is one

of the few strategic aspects of the EU-Russia relationship that has not been undermined by sanctions thus far. The agreement also shows that energy trade could stay within the framework of a commercial relationship, despite the political crisis that has characterised EU-Russia relations following the conflict in Ukraine.

While energy trade will certainly not resolve the political crisis, its continuation suggests that pragmatic cooperation in some strategic fields remains possible. At the same time, the positive effects of such sectoral cooperation should not be overestimated, as they could be swiftly overturned by new escalations of political and military tensions.