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GLOBAL ANTITRUST/FDI ENERGY SECTOR NEWSLETTER OCTOBER 2022

Welcome to the October 2022 edition of the Clifford Chance Global Antitrust/FDI Energy Newsletter, providing an overview of recent antitrust and foreign direct investment ("**FDI**") developments of particular relevance to companies active in the energy sector.

This regular newsletter is a digest of key antitrust and FDI developments in the energy sector in the following regions:

- Asia Pacific
- Europe
- Americas

If you would like to know more about the subjects covered in this publication, please refer to the list of contacts on pages 10 and 11.

INTRODUCTION

The second part of this year has been marked by a continued drive of European regulators and legislators to implement new and updated rules and guidance relevant to the energy sector, including: the new REPowerEU package; a further Delegated Act of the EU Taxonomy to include specific nuclear and gas energy activities; the political agreement on the EU Foreign Subsidies Regulation; updated and simplified procedures for State aid applicable to green transport; the adoption of the TEN-E Regulation relating to trans-European energy infrastructure; updates on energy cases reviewed under the UK's new national security screening regime; and the launch of a market study by the UK's CMA into road fuel markets.

In addition, in July 2022, the EU issued its first amendment to its State Aid Temporary Crisis Framework in direct response to the Russian invasion of Ukraine, to ensure that sufficient liquidity remains available to businesses through subsidised State guarantees, and to compensate companies for the additional costs incurred due to exceptionally high gas and electricity prices caused by the Ukraine war.

These and other regulatory changes in Europe described below occur in the context of regulators' increasing focus on energy-related antitrust issues and energy policy more generally. This focus is also evident in jurisdictions in Asia Pacific, where, for example, the Chinese Administration for Market Regulation stepped up active antitrust enforcement against anti-competitive conduct in the public utility sector, and in the US where the Federal Trade Commission continues its in-depth scrutiny of oil and gas transactions.

ASIA PACIFIC

Chinese antitrust authority has stepped up antitrust enforcement in the public utility sector

In the past six months, the local antitrust authorities, *i.e.*, the local Administration for Market Regulation ("**AMR**"), in China actively enforced punishments against local anti-competitive conduct in the public utility sector, such as water and gas supply, in the following cases:

- Ningxia AMR fines a local gas supplier for abuse of dominance through tying;
- Zhejiang AMR fines two local water suppliers for exclusive dealing and imposing unreasonable trading conditions;
- Guizhou AMR fines eight local LPG companies for price-fixing and dividing the market;
- Guizhou AMR fines a local water supplier for exclusive dealing; and
- Anhui AMR fines a local gas supplier for exclusive dealing.

For further background on these local enforcement cases, please see our quarterly update "Antitrust in China and Across the Region" (April to June 2022).

Japanese antitrust authority published proposed revisions to guidelines on gasoline pricing issues

On 20 September 2022, the Japan Fair Trade Commission ("**JFTC**") launched a public consultation on proposed revisions to its guidelines against discriminatory pricing and unjustifiable low prices in the gasoline sector. The proposed revisions are introduced to clarify, among others, the factors that need to be included in the calculation of the total cost of sales when determining unfair pricing, and potential conduct that could adversely impact other businesses. Additionally, the revisions reflect the results of past enforcement cases by the JFTC to better illustrate the regulator's approach to relevant issues. According to the press release published on the JFTC's website, the revisions have been formulated to prevent illegal conduct, to increase transparency and predictability, and help respond to potential violations in a more effective manner.

Philippines' competition agency's new interim chair outlined enforcement priorities for the second half of 2022

On 6 July 2022, the Philippine Competition Commission ("**PCC**") formally announced that Johannes Bernabe takes over the reins as interim chair, following the return of the former chair Arsenio Balisacan to the cabinet of the new administration. After taking office, Bernabe outlined the enforcement priorities for the second half of 2022, one of which is to conclude all investigations that have been ongoing for at least two years, including the investigations in the energy sector.

Greenwashing – Australian Carbon Credit Units are in the regulatory spotlight

On 1 July 2022, the Australian Federal Government announced that it had commissioned an independent review (**Review**) of the Australian Carbon Credits Units (**ACCU**) regime which was established under the *Carbon Credits (Carbon Farming Initiative) Act 2011* to assess emissions reductions which underpin the issue of ACCUs. Despite the ACCU regime being intended to only award credits to emissions avoidance and carbon sequestration projects, there is concern that companies are being issued credits for projects which have little or no impact on carbon emissions reductions. The Review will consider whether the ACCU regime's governance structure is fit for purpose, and will assess the management of conflicts of interest, methodologies and review processes for carbon credits, as well as how carbon credits can generate associated benefits. Given that the integrity of ACCUs is considered to be key to achieving Australia's pledge to cut carbon emissions by 43% from 2005 levels by 2030, and that ACCUs are perceived as a "high integrity" form of carbon offset that generally attract much higher prices than many of the offset units that can be purchased overseas, the ACCU regime is a focus area with critics concerned that greenwashing practices are occurring to the detriment of the public interest. Greenwashing is also currently on the radar of regulators such as the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission, and it looks to be likely that these regulators will work closely with each other and with the Clean Energy Regulator.

EUROPE

The EU Foreign Subsidies Regulation

On 30 June 2022, the Council of the European Union and the European Parliament reached a political agreement on the proposal of the European Commission for the Foreign Subsidies Regulation ("**FSR**"). First announced in May 2021, the proposed Regulation is likely to be adopted later this year and will become directly applicable across the EU 6 months after its entry into force (by mid-2023).

The FSR will provide the European Commission with legal tools to tackle financial contributions granted by the public authorities of a non-EU country to undertakings engaging in an economic activity within the EU and which may distort the EU internal market and undermine competition between companies active in the EU. The aim of this new regulation is to ensure fair competition among companies and to establish equality of opportunity by filling the existing regulatory gap in the Single Market. While subsidies granted by EU countries are subject to State aid rules, so far there has been no comparable regime in place for support granted by non-EU countries.

In this regard, the FSR will introduce three different tools: (i) two new mandatory *ex ante* notification obligations to the European Commission of (a) concentrations where the EU turnover of the target company (or at least one of the merging entities or the joint venture) exceeds EUR 500 million, and the parties to the transaction received financial contributions from non-EU states exceeding EUR 50 million in the three calendar years prior to notification; and (b) bids involving a financial contribution from a foreign entity in public procurement procedures worth EUR 250 million or more; and (iii) a general investigation tool under which the European Commission will be empowered to start a review on its own initiative (*ex-officio*) or to request an ad-hoc notification of smaller concentrations and public procurement procedures which do not meet the above thresholds, if it suspects that foreign subsidies could lead to a distortion in the EU internal market.

The tools reflected in the FSR are expected to have a significant impact on M&A transactions and dealmaking as it entails a new regulatory requirement with respect to transactions or public procurement bids involving foreign financial funds, in addition to merger control and foreign direct investment. The notification obligation will pose an additional burden on investors and companies, which will need to carefully assess the timing, regulatory process and implications of this new tool before proceeding with specific M&A transactions or tender applications in the EU. The *ex-ante* notification obligations will start to apply 9 months after entry into force of the FSR.

First amendment to the European Commission's State Aid Temporary Crisis Framework in the context of Russia's invasion of Ukraine

On 20 July 2022, the European Commission adopted an amendment to the Temporary Crisis Framework for State aid measures to support the economy following Russia's aggression against Ukraine.

Since the Temporary Crisis Framework was adopted on 23 March 2022, Member States have been able to grant limited amounts of aid to companies affected by the current crisis, ensure that sufficient liquidity remains available to businesses through subsidised State guarantees, and compensate companies for the additional costs incurred due to exceptionally high gas and electricity prices.

The proposal adopted on 20 July now presents the following:

- Member States may now grant limited amounts of aid of up to the increased amount of EUR 500,000 per undertaking and per country, and up to EUR 62,000 and EUR 75,000 in the agriculture, and fisheries and aquaculture sectors respectively;
- technical clarifications regarding aid in the form of guarantees and loans;
- clarifications as to the conditions under which Member States may grant aid as compensation for the recent increase in the cost of gas and electricity for businesses. Amongst others, the amendment specifies that such aid may cover only up to 70% of the beneficiary's gas and electricity consumption during the same period in the previous year;
- new measures in line with the REPowerEU plan adopted on 18 May 2022, which aims to diversify Europe's energy system to address the EU's dependence on Russian fossil fuels.

The amended Temporary Crisis Framework also complements the Winter Preparedness Package, a new legislative tool aimed at reducing gas consumption in Europe by 15% until next spring, by considering on a case-by-case basis: (i) support for companies affected by mandatory or voluntary gas curtailment, (ii) support for the filling of gas storages, (iii) transitory and time-limited support for fuel switching to more polluting fossil fuels subject to energy efficiency efforts and to avoid lock-in effects, and (iv) support for the provision of insurance or reinsurance to companies transporting goods to and from Ukraine.

The REPowerEU plan

On 18 May 2022, the European Commission proposed the 'REPowerEU' package which modifies the Recovery and Resilience Facility ("**RRF**") Regulation and other legislative acts. It provides for targeted amendments to finance investments and reforms with the objective of diversifying energy supplies and reducing dependence on fossil fuels. On 4 October 2022, the Council reached an agreement on the REPowerEU proposal proposing some minor amendments. In practical terms, the European Commission's proposal seeks to add a new REPowerEU chapter to EU Member States' national recovery and resilience plans ("**RRPs**") under NextGenerationEU ("**NGEU**"), in order to finance key investments and reforms which will help achieve the REPowerEU objectives.

In its position, the Council limits the obligation for Member States to submit the REPowerEU chapter only to cases where they wish to request RRP additional funding in the form of RRF loans from NGEU, non-repayable support from new revenue or newly transferred resources from shared management programmes and thus not upwards updates of maximum financial contribution. Regarding possible derogations from the 'do-no-significant-harm' principle for investments improving the energy infrastructure and facilities to meet immediate security of supply needs for oil and gas as proposed by the European Commission, the Council does oblige Member States to provide a justification to the European Commission when they wish to derogate.

Given that the Council agreed on its amendments, it will now enter negotiations with the European Parliament and the European Commission (*i.e.*, trialogues) in order to agree as soon as possible on a final version of the text.

For more information on the REPowerEU plan, please see our dedicated client briefing: "REPowerEU: European Commission's proposed plan for more affordable, secure and sustainable energy".

The EU Taxonomy Delegated Act on nuclear and natural gas

On 15 July 2022, the EU Taxonomy Delegated Act was published in the Official Journal and will apply as of January 2023.

The Delegated Act provides that new gas-fired power or heat assets will be taxonomy-aligned if their life-cycle emissions are below 100g CO2/kWh, or meet a number of stringent conditions and obtain a construction permit by 2030. Gas plants must be designed to switch to renewable or low-carbon gases by the end of 2035, in line with an overall CO2 emissions threshold of 270 g/kWh or annual emissions not exceeding an average of 550 kg/kW over 20 years.

Taxonomy-aligned investments in nuclear energy cover new Generation III+ projects approved for construction until 2045, R&D investment in advanced technologies promoting safety and minimal waste, and investment in existing nuclear installations to extend operational lifetimes approved until 2040.

On 10 October 2022, Austria brought an action against the European Commission to the European Court of Justice, on both substantive and procedural grounds, challenging whether the inclusion of gas and nuclear activities in the Delegated Act was compliant with the Taxonomy Regulation and its environmental 'do no harm' principles, and challenging whether the Delegated Act was adopted in accordance with relevant EU law rules.

The European Commission proposes rules to simplify procedures for State aid to green transport

On 6 July 2022, the European Commission presented its proposed Council Regulation empowering the European Commission to declare certain types of aid for rail, inland waterway and multimodal transport compatible with the internal market and to exempt them from prior notification under EU State aid rules. This relates in particular to aid supporting the coordination of transport and aid for reimbursement for the discharge of certain obligations inherent in the concept of a public service, excluding public service compensation in relation to public passenger transport services (given that the latter is covered by Regulation 1370/2007).

Should the proposed Regulation be adopted by the Council, the European Commission would have to prepare and adopt a Block Exemption Regulation related to aid measures falling within these categories. This will provide legal certainty, simplify procedures and cut red tape for Member States, especially the smaller ones. It would allow them to swiftly adopt aid measures which will fulfil the criteria to be foreseen in the Block Exemption Regulation without notification, contributing thus to the development of green transport.

It will be interesting to see how the specific compatibility criteria will be defined in the future Block Exemption Regulation, in particular in relation to the purpose of the aid, the categories of beneficiaries or the relevant thresholds such as aid intensities (maximum aid per beneficiary) or overall maximum aid amounts.

The proposed Regulation is currently under Council's review.

Guidelines for trans-European energy infrastructure (TEN-E Regulation 2022/869)

On 30 May 2022, the European Union adopted new rules for the Trans-European Networks for Energy ("**TEN-E Regulation**") with the aim of improving security of supply, market integration, competition and sustainability in the energy sector. The Regulation further seeks to better support the modernisation of Europe's cross-border energy infrastructures and the EU Green Deal objectives.

The TEN-E Regulation governs the selection process, the development and the funding of the Projects of Common Interest ("**PCIs**"). PCIs are key cross-border infrastructure projects that link the energy systems of EU countries. Every two years the European Commission draws up a list of PCIs which has to be approved by the European Parliament and the Council. The projects must have a significant impact on energy markets and market integration in at least two EU countries, boost competition on energy markets and help the EU's energy security by diversifying sources as well as contribute to the EU's climate and energy goals by integrating renewables. PCIs are eligible for EU funding under the Connecting Europe Facility.

Under the revised TEN-E Regulation, natural gas infrastructure and oil pipelines will no longer be eligible for the PCI status, while new project groups are introduced such as hydrogen pipelines, electrolysers and smart electricity grids. In terms of permitting PCIs must be granted the status of the highest national significance, while the TEN-E Regulation provides for a specific duration of the permit granting process (24 months for the pre-application procedure and 18 months for the statutory permit granting procedure).

The European Commission launched the selection process for the 6th PCI list on 7 October 2022 and is expected to adopt the draft list in October 2023.

The UK's national security regime: Latest news and guidance

Since the regime's entry into force on 4 January 2022, the Government has blocked or imposed conditions in nine transactions under the UK's national security and investment ("**NS&I**") regime. Two of these decisions relate to the energy sector, where the Secretary of State ("**SoS**") imposed conditions to allay potential national security concerns. Both sets of conditions were imposed by Jacob Rees-Mogg (who was appointed as Secretary of State for Business, Energy and Industrial Strategy ("**BEIS**") on 6 September 2022), which could suggest that the new Conservative Government will take a more interventionist approach towards qualifying investments in sensitive areas of the economy.

- **Acquisition of the Stonehill project asset development rights by Stonehill Energy Storage Ltd**: The 'Stonehill project' is aimed at improving the UK Power Grid's ability to use renewable energy. The SoS identified potential national security risks relating to the security of an important UK electricity asset and services provided to the National Grid, and imposed two conditions: (i) a requirement on the acquirer to obtain Government approval before appointing a power offtake operator; and (ii) a restriction on the sharing of information from the power offtake operator to the acquirer. Although not referred to in the Government's reasoning, a Chinese government department (the State-Owned Assets Supervision and Administration Commission) reportedly owns, either directly or indirectly, at least 75% of the shares in the acquirer.
- **Acquisition of Electricity North West Limited by Redrock Investment Limited**: The Government imposed conditions on the acquisition of an indirect 35% interest in Electricity North West Limited, a British operator of the network distributing electricity to the northwest of England, by Redrock Investment Limited (which is reported as being controlled by the Chinese State Development and Investment Corporation). The SoS cited potential national security concerns regarding the security of an important UK electricity asset, and imposed restrictions on the sharing of information from the target to the acquirer and the influence of the acquirer over appointments of some staff members within the target.

The Government has also issued recent guidance on the application of the NS&I regime to new-build downstream gas and electricity assets. Whilst asset acquisitions are not subject to mandatory notification, they can be notified voluntarily, and the Government has broad powers to review and intervene in a wide range of deals on national security grounds (including to force divestments and unwind transactions) – in some cases, up to 5 years after the original acquisition took place. The guidance states that, in gas and electricity markets, the Government's powers extend to grants of network connection agreements by National Grid and to licences (*e.g.*, to operate an offshore wind farm or to build, own, and operate an asset on the electricity network). Businesses engaged in such activities should therefore consider the implications under the NS&I regime, including whether a voluntary NS&I notification might be appropriate.

For further background on the UK's NS&I regime, please see our dedicated client briefing: "The UK's new national security screening regime is now in full effect". Our antitrust/FDI blog posts also offers recent insights into the operation of the new regime, including the Government's first NS&I annual report and its subsequent market guidance for NS&I filings.

The UK's CMA launches a market study into road fuel markets

In response to a request from the SoS for BEIS, the Competition and Markets Authority ("**CMA**") launched an expedited review of the UK fuel retail market in June 2022 and published its initial report on 7 July. The CMA launched a road fuel market study the following day, allowing it to formally assess how the markets work and consider what actions (if any) might improve customer outcomes and reduce high fuel prices. If the CMA identifies potential anti-competitive effects during its market study it is likely to open a full-blown market investigation, which could last several years and result in structural market reforms (even in the absence of suspected breaches of competition law).

The CMA's initial report suggests that, at the time of publication on 7 July, fuel prices had risen largely due to increases in crude oil prices and the refining spread (*i.e.*, the gap between the price of crude oil entering refineries and wholesale prices of petrol and diesel leaving them), which mostly resulted from the war in Ukraine and the Covid 19 recovery. Crucially, the initial evidence suggests that the retailer spread (*i.e.*, the difference between wholesale and retail prices) has not significantly contributed to rising fuel prices and that the 5p fuel duty cut was reflected in retail prices on the whole. The CMA is currently investigating these findings in more detail as part of its market study with a particular focus on the large increases to the refining spread, local fuel price variations at the retail level (*e.g.*, at motorways), and the impact of long-term supply agreements between wholesalers and independent retailers. It has also made two recommendations on measures that the Government could consider in order to improve retail fuel price transparency: an open data scheme for individual forecourt prices and better information on motorways about pump prices.

The CMA has committed to providing an interim update on its market study in Autumn 2022, though no update has been published to date. The CMA also faces statutory deadlines to publish a notice on whether it intends to launch a market investigation by 7 January 2023, and to publish its final market study report by 7 July 2023. In parallel, the Government is aiming to conclude its assessment of the UK's fuel market by Spring 2023 (or earlier if possible, to align with the publication of the CMA's market study).

The CMA's call for information on green heating and insulation

In keeping with its commitment to prioritise cases where practices could impede the transition to a low carbon economy (as stated in the CMA's 2022/23 Annual Plan), the CMA has also launched a UK-wide call for information looking at consumer protection in the green heating and insulation sector with a response deadline of 1 November 2022. The CMA is concerned that consumers may face difficulties in relation to the purchase and operation of low-carbon systems which provide heat and/or hot water to homes (*e.g.*, heat pumps, home solar and insulation, biomass boilers, and hydrogen-ready boilers), which are likely to be exacerbated by the cost-of-living crisis. In particular, the CMA has stated that the sector is perceived as difficult and complex, and consumers may have a limited understanding of the protections offered under certification schemes and consumer protection law – which could incentivise unfair business practices such as pressured sales tactics, misleading claims, and problems after products have been installed.

The CMA has committed to publishing a short report summarising its key findings in Spring 2023, which is likely to result in guidance to consumers/businesses (or a formal market study, if potential concerns are identified). It is worth noting that the CMA publicly committed to launch at least one market study in a net zero related market in the current financial year as part of a wider set of proposals for competition law reforms to the UK Government, though no such study has been launched to date.

For further information on the UK Government's announcements regarding wider reforms to competition and consumer policy, please see our dedicated client briefing here.

The UK VABEO has entered into force, with important differences to the EU VBER

Following its departure from the EU, the UK Government published the final version of its Vertical Agreements Block Exemption Order ("**VABEO**"), which entered into force on 1 June 2022 and replaced the EU 2010 Vertical Block Exemption Regulation ("**VBER**") (which applied in the UK as retained EU law). Like the EU VBER, the VABEO provides a 'safe harbour' for certain vertical agreements from the UK's general prohibition on anti-competitive agreements (*i.e.*, Chapter I of the Competition Act 1998).

The VABEO contains a number of similarities to the equivalent EU's new VBER, which entered into force on the same day. For example, they both reflect important changes in market dynamics since the VBER was last updated in 2010, including the increased use of "dual distribution" models (where suppliers compete with their distributors in certain sales channels) and the growth of online sales. However, the VABEO differs from the VBER in a few material respects: for example, exclusivity 'evergreen' clauses that are tacitly renewable beyond 5 years are protected by the VBER, but not by the UK VABEO. The VABEO also has a duration of six years (until 1 June 2028), just half of the VBER's 12-year term, leaving room for further regulatory divergence from the EU in the coming years.

For more information on the VBER, the VABEO, and the key differences between them, please see our dedicated client briefings: "The new EU and UK competition regimes for distribution arrangements" and "The UK Vertical Agreements Block Exemption Order: Key Takeaways from the CMA Guidance".

AMERICAS

Agency Enforcement Actions

The Federal Trade Commission ("**FTC**") issued the following orders in the past months:

- **EnCap / EP Energy**: In September 2022, the FTC entered its final order requiring the divestiture of energy producer EP Energy Corp.'s Utah business and assets, resolving the FTC's "allegations that EnCap Energy Capital Fund XI, L.P.'s proposed USD 1.445 billion acquisition of EP Energy Corp. would eliminate head-to-head competition between two of only four significant producers and otherwise harm competition for the sale of Uinta Basin waxy crude oil to Salt Lake City refiners." During the public comment period, the agency received numerous requests to modify a provision of the order requiring the parties to gain prior agency approval before engaging in certain transactions, including an increase in certain land interests. However, the agency chose to issue the order without alteration.

- **Buckeye / Magellan**: In August 2022, the FTC entered its final order requiring energy pipeline and storage companies Buckeye Partners, L.P. and Magellan Midstream Partners, L.P. to divest petroleum terminals in South Carolina and Alabama as a condition of Buckeye's USD 435 million proposed acquisition of 26 Magellan terminals. The complaint alleged that without a remedy, the acquisition would harm competition for terminaling services for all "light petroleum product terminals" as well as for gasoline specifically. While all five FTC commissioners voted in favor, Commissioners Noah Phillips and Christine Wilson wrote separately to discuss the provision in the proposed order requiring the parties to obtain private approval from the FTC before making certain acquisitions in the future. The Commissioners' statement highlighted several anticompetitive harms that could result from such provisions, including "limiting the ability of local landowners to maximize the productivity and value of their land, impeding the production of oil and gas in the region, and harming the economic development of" the area in which the parties were located.
- **ARKO / GPM**: In June 2022, the FTC issued a consent order resolving its investigation into the acquisition of 60 retail fuel outlets by ARKO Corp. and its subsidiary GPM in Michigan and Ohio. In addition to requiring the divestiture of five outlets, the FTC also required substantial modifications to the non-compete section of the purchase agreement. As part of the original transaction, the parties had agreed not to compete for a period of time and within a specified radius around both the acquired outlets and 190 locations already owned, operated, or leased by GPM. The FTC's order limited the non-competes to a maximum duration of three years and an area of three miles within the acquired stations. The FTC issued its final order in the matter in August 2022. For further information, please see our dedicated briefing on this matter.

Private Litigation

The following private antitrust litigation are of interest:

- **Persian Gulf, Inc. v. BP West Coast Products:** In September 2022, a California federal court granted summary judgment to defendant gasoline companies in a long-running private antitrust lawsuit. The suit alleged that defendants (including BP West Coast, Chevron, ExxonMobil, and Shell) had conspired to fix gas prices in California in violation of the Sherman Act, using maintenance shutdown and a refinery explosion as cover for the conspiracy**.** The judge found that plaintiffs' evidence of parallel pricing, communications between traders at different defendant companies, and failure by other defendants to take advantage of Exxon's refinery explosion was insufficient to show that the defendants had colluded.
- **Ellis v. Salt River Project:** In August 2022, the district judge overseeing an ongoing consumer litigation against the Salt River Project ("**SRP**"), an Arizona power utility, dismissed the attempted-monopolization and equal-protection counts of the plaintiffs' complaint, leaving only a claim of monopolization under Section 2 of the Sherman Act. The plaintiffs' theories arose from allegations that the SRP had issued a rate change that discriminated against customers who received part of their electricity from home-installed solar and part from SRP. The court ruled that only competitors had

standing to bring attempted monopolization claims, and the plaintiff consumers were not competitors of SRP.

Joint FTC and DOJ comment to FERC

The FTC and US Department of Justice ("**DOJ**") submitted a joint comment to the US Federal Energy Regulatory Commission ("**FERC**") "*urging [FERC] not to restore a right of first refusal that would enable incumbent electricity transmission owners to block competitors from bidding to design, construct, and own certain new interstate transmission facilities*."

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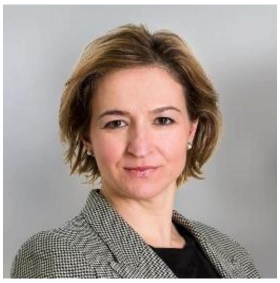

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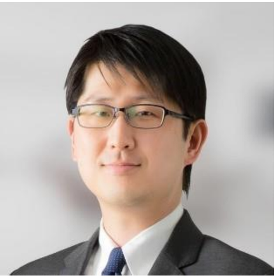

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