

CONTENTS

<i>List of Abbreviations</i>	xiii
<i>List of Authors and Editors</i>	xvii
<i>Foreword</i>	xix
<i>Introduction</i>	xxi

PART I

THE ROLE OF CASE LAW IN LIBERALISING EU ENERGY MARKETS

Chapter I

EU Case Law on the Second Energy Package: a Review

Berend Jan DRIJBER	3
1. Introduction	3
2. Institutional matters	4
2.1. Legislative Framework	4
2.2. Commission/Sweden	6
2.3. Commission/Belgium I	6
2.4. Commission/Belgium II	7
2.5. Further case-law	8
3. Access to networks	9
3.1. Background	9
3.2. Commission / Slovakia	10
3.3. Sabatauskas	11
4. Price intervention	13
4.1. Background	13
4.2. Federutility	13
4.3. ENEL	16
5. Conclusions and outlook	20

Chapter II

State Regulation of Supply Prices for Electricity and Gas

The Federutility Case

Thomas DERUYTTER and Frederik VANDENDRIESSCHE	23
1. Introduction	23
2. The “components” of the price of electricity and natural gas	25

3.	PSO relating to natural gas and electricity and State regulation of supply prices	27
3.1.	Introduction	27
3.2.	Price regulation as a mandatory PSO?	29
3.2.1.	Universal service	29
3.2.2.	Consumer protection	30
3.3.	Price regulation as a non-mandatory PSO	34
4.	The <i>Federutility</i> case	35
4.1.	Background.	35
4.2.	The price-intervention must be justified in the general economic interest	37
4.3.	Compliance with the principle of proportionality	38
4.4.	The price regulation must be clearly defined, transparent, verifiable, non-discriminatory, and guarantee equal access for EU gas companies to consumers	41
4.5.	Notification to the EC	42
5.	Epilogue	43

Chapter III

Can Foreign Investors in Liberalised Electricity Markets Successfully Challenge Price Caps under International Law?

Case Comment on *AES v. Hungary*

	Anatole BOUTE	45
1.	Introduction	45
2.	Government interference with electricity prices in <i>AES v. Hungary</i> : the facts	47
3.	Claims, defense and findings of the Tribunal	50
3.1.	The fair and equitable treatment standard	50
3.2.	Non-discrimination and the prohibition of unreasonable measures	52
3.3.	Constant protection and security	55
3.4.	Expropriation	55
4.	Critical reflections on <i>AES v. Hungary</i>	56
4.1.	The protection of investors' expectations that markets will be organised on a liberalised basis	56
4.2.	The delicate balance between investors' and consumers' rights	57
4.3.	Interference with the right to sell electricity at free market prices as "partial expropriation"	60
5.	Conclusion	62

PART II

ENERGY AND CARBON MARKETS – TRANSPARENCY AND DESIGN CHALLENGES

Chapter IV

Regulation on Wholesale Energy Market Integrity and Transparency

Odd-Harald B. WASENDEN and Halvor AURMO	67
1. Introduction.....	67
2. The REMIT range of application	69
3. The definition of inside information.....	71
3.1. General.....	71
3.2. Information.....	71
3.3. Of a precise nature	74
3.4. Not made public.....	74
3.5. Significantly affect the prices	75
3.6. Summary of definition of inside information.....	75
4. Disclosure obligations.....	76
4.1. Material and personal scope.....	76
4.2. How and when to disclose information	78
5. Prohibition of insider trading.....	81
6. Prohibition of market manipulation.....	83
6.1. General.....	83
6.2. The definition of market manipulation.....	85
6.2.1. Overview	85
6.2.2. Transactions or orders to trade	86
6.2.3. False or misleading signals as to the supply, demand or price	87
6.2.4. Secures or attempt to secure the price at an artificial level ...	88
6.2.5. Transactions involving fictitious devices/deception	90
6.2.6. Dissemination of false or misleading information.....	90
7. Procedural and institutional matters	91
7.1. Market monitoring.....	91
7.2. Data collection.....	92
7.3. Registration of market participants.....	95
7.4. Investigation and enforcement	95
8. Conclusion	96

Chapter V

Transparency in the Upstream Gas Market

Jeppe DANØ	99
1. Introduction.....	99
2. Upstream regimes in the North Sea	101
3. Energy market integration and transparency.....	104
4. The Danish Case	105
4.1 Development of the Danish gas market	105
4.2 DERA report.....	106
5. The European context	107
6. Challenges in the light of REMIT	109
7. Conclusion	110

Chapter VI

End-User Emissions Trading: What, Why, How and When?

Suryapratim ROY and Edwin WOERDMAN	111
1. Introduction.....	111
2. What is end-user emissions trading?.....	113
2.1. Personal carbon trading	113
2.2. Other proposed schemes.....	114
2.3. Towards an end-user emissions trading scheme.....	115
3. Why do we need an end-user emissions trading scheme?.....	117
3.1. Rationalising sustainable engagement.....	118
3.2. Regulating offset markets	120
3.3. Capping uncapped sectors	122
3.4. Energy efficiency through the backdoor?	125
4. How is such a scheme to be designed?	127
4.1. Allocation and distributional equity	127
4.2. The issue of integration	130
4.3. Choosing an enforcement mechanism	130
4.4. Legal framework	132
4.4.1. Defining different instruments	132
4.4.2. Voluntary markets and ex-post enforcement.....	134
5. When could we see such a scheme being translated to policy?	135
5.1. Political acceptability.....	135
5.2. Public acceptability.....	137
6. Conclusion	139

PART III

DEVELOPING EU ENERGY INFRASTRUCTURE – NEW GRIDS AND
REGULATORY INSTRUMENTS

Chapter VII

Developing a Competitive European Energy Market:

The infrastructure challenge

Sylvia Elisabeth BEYER	143
1. Introduction	143
2. Background – Energy infrastructure priorities for 2020 and beyond ...	146
3. The priorities for energy infrastructure development	149
3.1. Remaining bottlenecks condition future priorities	149
3.2. The obstacles to investment	155
4. The proposal on guidelines for trans-European energy infrastructure..	157
4.1. Legal instrument	157
4.2. Identifying projects of common interest	159
4.3. The permit granting regime	161
4.4. Enabling cross-border investment	164
4.5. Financial support under the future EU budget 2014–2020	166
5. Conclusion	167

Chapter VIII

Overcoming Legal Challenges for Offshore Electricity Grid Development:

a Case Study of the Cobra and Kriegers Flak Projects

Olivia WOOLLEY	169
1. Introduction	169
2. Connecting offshore wind farms	174
3. Support schemes for offshore wind energy	178
4. Recovering the costs of grid development	182
5. Priority grid access for renewable energy	187
6. Obtaining authorisation for offshore development	191
7. Conclusion: from modular developments to regional offshore grids	193

PART IV SECURING ENERGY SUPPLY – RESOURCE AND TREATY DEVELOPMENTS

Chapter IX

The Introduction of Unconventional Gas in Europe: Opportunities and Challenges

Anne-Sophie CORBEAU	199
1. Introducing unconventional gas.....	199
2. Abundant resources.....	200
3. Current unconventional gas production	202
4. Market impact of the US unconventional gas revolution	203
5. International evolution	205
6. What are the challenges?	206
6.1. Introduction	206
6.2. Geological factors	207
6.3. Costs	208
6.4. Company factors	209
6.5. National and regulatory issues	209
7. A recent trend: an increased opposition to unconventional gas	211
8. Conclusion	212

Chapter X

The Draft Convention on Ensuring International Energy Security – A Successor of the Energy Charter Treaty?

Sergey SELIVERSTOV, Martha ROGGENKAMP and Graham COOP	213
1. Introduction.....	213
2. The Energy Charter Treaty.....	214
2.1. Background.....	214
2.2. Trade and investment.....	215
2.3. Dispute settlement mechanisms	216
3. The Draft Convention on Energy Security	217
3.1. Introduction	217
3.2. Motives and justifications for the Draft Convention.....	218
3.2.1. The opposition	218
3.2.2. Economic developments	219
3.2.3. EU developments.....	219
3.2.4. Impact of the transit conflicts	221
3.2.5. The energy security agenda.....	221
3.2.6. The outcome	222

3.3. Basic provisions of the Draft Convention	223
3.3.1. Draft Convention versus Energy Charter Treaty	223
3.3.2. Goals and definitions	223
3.3.3. Investments, transit and trade	224
3.3.4. Competition and state monopolies	227
3.3.5. Gaps and missing elements	227
4. European Union views	228
4.1. Regulating security of supply	228
4.2. Platform for negotiations	229
4.3. Some specific comments on certain proposed provisions	230
4.4. Final observations	231
5. Conclusions	231
Annex	
Draft Convention on Ensuring International Energy Security	233