

Eric Stein Working Paper No 3/2009

THE AFFORDABILITY OF ENERGY SUPPLY

Marija Bartl

Czech Society for European and Comparative Law • Prague • Czech Republic

The Eric Stein Working Papers
<http://www.ericsteinpapers.eu>

Editor in Chief
Jan Komarek
Jan.Komarek@some.oxon.org

All rights reserved.
No part of this paper may be reproduced in any form
without permission of the author.

Abstract

The Affordability is a new, rather “alien” concept penetrating into the ambit of Contract and Consumer Law, through the ‘universal service’ or ‘public service’ obligations of the Services of General Economic Interest. Its constitutional dimension will be confirmed by the Treaty of Lisbon in connection to the Charter of Fundamental Rights of the EU. This truly European Concept has been introduced in the connection with the liberalization of the utilities sectors driven by the EU as to mitigate possible negative consequences of the liberalization.

The Second Energy Package comes with a quite clear idea how to provide for the Affordability of Energy Supply, however, the MS have often opted for different strategies, from various reasons. This paper will attempt to examine the efficiency of the strategies employed by the some of the Member States and spell out its relation to the EU legislation.

First part of this paper examines different Regulatory Strategies for ensuring Affordability of Energy Supply adopted in three Member States (France, Slovakia and United Kingdom) responding to the question to what extent these regulatory strategies are capable to ensure what they promised, i.e. the Affordability of Energy Supply.

The second part of the paper enters into a more detailed inquiry of the No-Regulation Strategy employed by the Czech Republic. On the basis of consumer complaints and the case law we will examine the implications of the decision not to introduce any specific measures for ensuring Affordability.

Keywords

Affordability - Consumer Protection - Universal Service - Public Service - Energy Markets
- Services of General Economic Interest

Table of Contents

- 1. Introduction..... 1
- 2. *Affordability through Regulation*..... 3
 - 2.1. *Affordability: Generally*..... 3
 - 2.1.1. *Affordability through Price Regulation* 4
 - 2.1.2. *Affordability through Targeted Regulation: The concept of vulnerable consumer*..... 5
 - 2.2. *The French Model: The Price Regulation through Default Tariffs* 6
 - 2.2.1. *Additional measures for the protection of Vulnerable Consumers in France*..... 7
 - 2.3. *The Slovak Model: The Price Regulation through Price Caps* 8
 - 2.3.1. *Protection of (vulnerable) consumers in Slovakia*.....10
 - 2.4. *The UK model: The targeted regulation* 11
 - 2.4.1. *Protection of vulnerable consumers in the UK*.....13
- 3. *Affordability through Competition?*.....16
 - 3.1. *The Czech model: No Regulation*.....16
 - 3.1.1. *The non-transposed consumer protection requirements of the Second Energy Directive*.....17
 - 3.2. *The position of (vulnerable) Consumers in Czech Republic: the problems*18
 - 3.2.1. *The results of Empirical Research and Recommendations*19
 - 3.2.2. *The price of energy*19
 - 3.2.3. *Disconnection*19
 - 3.2.4. *Billing*.....21
 - 3.2.5. *Theft of energy*22
 - 3.2.6. *On the constitutionality of the regulation*24
- 4. *Conclusion*.....25
- Bibliography*28

The Affordability of Energy Supply

Marija Bartl*

1. Introduction

In energy markets today, we do not face any more the question whether to regulate, but rather, 'how far' the regulation should go. This development has not been anticipated (by many) at the beginning of liberalization; on the contrary, the privatization and the deregulation in the 80s and 90s was driven by the belief in the withdrawal of 'inefficient' state structures and belief in the free competition in utilities markets, which would finally lead to complete deregulation. However, ever increasing regulation indicates that these expectations were not accurate¹.

Central for the response to the question 'why is it so?' is *consumer*; who is a bottom-line to the whole debate on (de)regulation of public services. The EU institutions² as well as numerous scholars³ further the idea that even if the competition was fully operating, there would be still place for regulation: in particular for ensuring the protection of consumer interests, i.e. ensuring the Affordability, Quality and Continuity of Energy Supply.

Apart from the pioneers in liberalization of utilities sectors⁴, the European Union (EU) has been a motor of the liberalization of the energy sector in most of the Member States (MS). Its liberalization strategy builds⁵ on the relatively successful⁶ UK liberalization experience on the one hand, which is complemented by the French concept of *service public*⁷.

* PhD Researcher, European University Institute (Italy). I am highly indebted to the Czech Energy Authority (ERU), and concretely to Martina Veselá, Helena Arnoldová, Jarmila Grígelová, Miroslav Belica, Pavel Círek and Pavel Fucik, for their help with the empirical research.

¹ See E. McRobb and T. Prosser: *Regulating electricity*, in L. Macgregor, T. Prosser, and Ch. Villiers (eds.): *Regulation and markets beyond 2000*; Ashgate, 2000, p. 63,4.

² See eg. Communication from the Commission to the European Parliament and the Council: *Towards a European Charter on the Rights of Energy Consumers*, COM(2007)386 final, Brussels, July 2007 'There is broad consensus that market mechanisms alone cannot fully ensure consumers' best interests in the energy sector', p. 3.

³ See eg. M. Grenfell: *Can Competition supplant Utilities Regulation?* or Ch. McCrudden: *Social Policy and Economic Regulators: Some Issues from the Reform of Utility Regulation*, both in Ch. McCrudden (ed.): *Regulation and deregulation policy and practice in the utilities and financial services*, Oxford University Press, 1999.

⁴ The UK, Norway, Sweden, Finland, Austria; see eg. ERGEG: *Status review on end-user price Regulation*, Ref: E07-CPR-08-04, June 2007, p.9 or G. Bellantuono, F. Boffa, *Energy Regulation and Consumers' interests*, Final Report, July 2007 p. 52 ff.

⁵ The major components of liberalization of the market (privatization, unbundling, regulation etc.). However, the EU did not decide to the reform 'at once' as was the case in UK energy market, but divided on different steps. In addition, the UK Regulator (OFGEM) has a 'leading voice' in the EU energy policy; chairman of the OFGEM is the president of CEER and a chairman in ERGEG. See: OFGEM *A leading voice in Europe* <http://www.ofgem.gov.uk/Media/FactSheets/Documents1/13509-leadingvoiceineuropeA4.pdf>.

⁶ Successful much more in electricity than in gas market reform, partly due to the fact that the UK privatized the gas company as a whole; contrary to the electricity sector. See eg. See M. Grenfell: *Can Competition*

The EU energy policy and regulation has several (complementary) objectives. It aims to build the efficient competition in the ever enlarging markets (from national markets to regional markets, with final objective the EU Internal Energy Market). Contingent to this objective is the empowerment of consumer, who are *conditio sine qua non* for emergence of the competition⁸ and who should become an important player in energy markets. The EU energy policy is further complemented with the concern for security and sustainability⁹ of Energy Supply.

The tools for the empowerment of consumers in the utilities sectors, and simultaneously the Community objectives, are *Universal Service, Continuity, Quality of service, Affordability, and User and Consumer Protection*¹⁰. These objectives will be raised to the (quasi)constitutional level by the Protocol 23 to the Lisbon Treaty, which requires the high level of Quality, Safety and Affordability, Equal Treatment and the promotion of Universal Service Access and of User Rights, and in connection with the Art. 36 of the Charter of Fundamental Rights¹¹.

Stepping down to the Secondary Legislation¹², the EC requires the MS to ensure that everyone enjoys *universal service that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices*. The right to universal service for reasonable prices is linked to the notion of vulnerable consumer¹³, which is the main venue the EU envisages for ensuring the Universal Service and Affordability of Energy Supply.

The central thesis advanced by this paper is that the Regulation targeted at the protection of Vulnerable Consumers is the most successful attempt to strike the balance between the strict market regulation prompted by the strategic importance of Energy Supply on the one

supplant Utilities Regulation? in: Ch. McCrudden (ed.): *Regulation and deregulation policy and practice in the utilities and financial services*, Oxford University Press, 1999, p222.

⁷ The principles of continuity, equality and adaptability. See Hans-W. Micklitz, Jürgen Keßler, *Kundenschutz auf den liberalisierten Märkten – Energie, Vergleich der Konzepte, Maßnahmen und Wirkungen in Europa*, Nomos, Baden-Baden, 2008, p. 142; The idea of universal service was initially ‘borrowed’ from telecommunication sector, it was one of the standard justifications for the monopoly structure of the market in number of countries, including the USA. See Robert Loube: *Public Interest Regulation, Common Costs, and Universal Service*, in Miller, W. J. Samuels (ed): *The institutionalist approach to public utilities regulation*, Michigan State University Press, 2002, p226.

⁸ Driver of competition is free choice and consumer switching.

⁹ See Communication from the Commission to the European Parliament and the Council: An energy policy for Europe {SEC(2007) 12} COM(2007) 1 final, p1.

¹⁰ Communication from the Commission to the European Parliament and the Council: Green paper on services of general interest, COM(2003) 270 final, p15.

¹¹ European Charter of Fundamental Rights: Art. 36: *Access to services of general economic interest: The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.*

¹² Art. 3 (3) of the Directive 2003/54/EC of the European Parliament and the Council concerning common rules for the internal market in electricity.

¹³ P. Cameron, *Legal Aspects of EU Energy Regulation*, Oxford University Press, 2005, p25.

hand and belief in the free competition on the other. These specially tailored measures are able to reconcile liberalization of the utilities sector, with more social justice oriented goals¹⁴.

What this paper will not tackle is the *Affordability of access*. The reasons is limited scope of the paper and consequent necessity to prioritize. Due to the high electrification in the countries dealt with here, the Affordability of access is simply less an issue in Europe than in some other countries¹⁵ with less developed infrastructure.

The organization of the paper will be the following: First part examines different strategies of ensuring Affordability through Regulation, ie. French model - through *Price Regulation combined with the Targeted regulation for the Protection of Vulnerable Consumers*, Slovak model - through *Price Regulation without the Protection of Vulnerable Consumers* (Slovakia) and lastly the UK model – *the Regulation targeted at the protection of Vulnerable Consumers*. The second part of the paper then focuses, in greater detail, to the Czech model, which is based on the Competition (or No-Regulation) paradigm as a way of ensuring Affordability of Energy Supply.

2. Affordability through Regulation

2.1. Affordability: Generally

The Affordability is foremost an economic category. It has to do with the ability of certain consumers or consumer groups to pay for a minimum level of service. As Franktauser and Tepic¹⁶ stress, the ability to pay is distinct from willingness to pay, which has a clear technical meaning in consumer theory, where it is defined as the amount of income someone is willing to forgo to obtain a certain service. At its simplest, the Affordability (or the Affordability ratio) is defined as the share of monthly household income (or alternatively expenditure) that is spent on utility services (such as electricity, district heating and water).

The household lives in so called ‘fuel poverty’ if it spends more then certain part of its income on the energy. In the UK, the ‘fuel poverty’ is defined by the household expenditure of more then 10% on energy¹⁷, the EBRD benchmark is 25% of expenditure on all the

¹⁴ See I. Houben: *Public Service Obligations: Moral Counterbalance of Technical Liberalization Legislation?*, European Review of Private Law 1-2008.

¹⁵ See eg. Fankhauser and S. Tepic, *Can poor consumers pay for energy and water? An Affordability analysis for transition countries*, Working Paper 92, European Bank for Reconstruction and Development, May 2005 or Waddams Price, Kh. Pham: *The Impact of Electricity Market Reform on Consumers*, ESRC Centre for Competition Policy, CCP Working Paper 08-7.

¹⁶ S. Fankhauser and S. Tepic, *Can poor consumers pay for energy and water? An Affordability analysis for transition countries*, European Bank Reconstruction and Development, May 2005, p. 4.

¹⁷ See OFGEM: Sustainable Development Report, November 2007, p. 31.

utilities¹⁸. Obviously, the benchmark varies depending on the economic development of a country.

As it was already mentioned, there are two major strategies how the policy makers try to ensure the Affordability of energy through regulation, ie the *price regulation* (as a most direct way of control of the contract requisites) and the *targeted regulation* (directed at particular group of vulnerable consumers) Before going to look at the different models adopted by the selected countries, it is necessary to look more closely at this two regulatory strategies.

2. 1. 1. Affordability through *Price Regulation*

The main rationale for the price regulation in liberalizing markets should be “*to exercise a downward pressure on pricing to become an effective substitute for competition, incentivising the companies to become even more efficient, and to pass on efficiency gains to consumers.*”¹⁹ However, often the price regulation would be an easy way how to gain cheap political support. Thus the problem of setting the price correctly²⁰ becomes even greater in cases where the regulator lacks the efficient, non-populist objectives (which have to be supplied in the political process), with corresponding very negative impacts on the market.

It remains true that removing the regulated tariffs in some countries (in transition) and bringing the price into cost-reflective level might have very adverse consequences on the (vulnerable) consumers²¹. On the other hand, however, the unsatisfactory quality of Energy Supply and lack of investment into the networks impedes the development of economy and perpetuates thus the poverty. Therefore even in the countries in transition the (de)regulation of prices should be reconsidered; this being even more valid for the EU MS. However, According to the Price Report of the European Regulators’ Group for Electricity and Gas (ERGEG), the End-user Price Regulation is present in 17 countries out of 27 EU Member States²². As the main objective of the price regulation is stated to be the consumer protection²³. To what extent this corresponds to the reality will be examined later in this paper.

Generally, the number of different price regulation methods might be detected in the energy markets, exercised by different actors and for different subjects. Some of the examples are: price regulation aimed only at certain groups of customers [eg. small business, households or all customers]; only at certain energy ‘products’ [eg. default tariffs as ‘energy products’,

¹⁸ Fankhauser and S. Tepic, *Can poor consumers pay for energy and water? An Affordability analysis for transition countries*, Working Paper 92, European Bank for Reconstruction and Development, May 2005, p. 5.

¹⁹ M. Grenfell: *Can Competition supplant Utilities Regulation?* in: Ch. McCrudden (ed.): *Regulation and deregulation policy and practice in the utilities and financial services*, Oxford University Press, 1999. p224.

²⁰ See OFGEM *Review of domestic gas and electricity competition and supply price regulation: Conclusions and final proposals*, February 2002, p2, 16.

²¹ See also Waddams Price, Kh. Pham: *The Impact of Electricity Market Reform on Consumers*, ESRC Centre for Competition Policy, CCP Working Paper 08-7.

²² The figure for energy markets; for gas markets it is 9. ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p6.

²³ *Ibid.*, p14.

price/revenue caps on eg. household products; types of price caps: maximum price, the all-inclusive price, profit caps, revenue caps, etc.]; price regulation applicable only by certain suppliers [eg. incumbents (France) or any supplier upon application (Netherlands)] or imposed by different actors [eg. regulators (Slovakia), minister (France), local authorities]²⁴.

The objective of the paper will not be to examine in depth the particular impact of different price regulation methods in energy market, but rather to examine – on the basis of two selected countries (France and Slovakia) – to what extent the price regulation indeed guarantees what it promises: the Affordability of Energy Supply.

These two countries would allow us to explore different impacts of two major types of price regulation on the competition in energy market, further the impact of setting the price above or beyond the market price, but foremost to contrast the impact of price regulation with and without additional protection of vulnerable consumers for the overall Affordability of Energy Supply.

2. 1. 2. Affordability through *Targeted Regulation*: The concept of vulnerable consumer

The liberalization of the utilities sectors is driven by the idea that the free market is able to bring the maximum benefits to the consumers, and the majority of consumers (at least in the developed countries) are able to take advantage of the free competition in the utilities sector. However, it is also accepted that there is a group of consumers which can not achieve these objectives so easily because they are disadvantaged in this way or another and thus the regulation is needed to ensure that they have the access to affordable energy²⁵. This is also a model adopted by the EU legislation.

The EU legislation does not define Vulnerable Consumers, thus the MS have some margin to develop their own definition which would fit their economic and social circumstance (while respecting the non-discriminatory treatment²⁶). Of course, some guidance might be inferred from the wording of the directive itself (MS may include measures for protection of consumers in remote areas²⁷).

In this context it is necessary to note that Gas Directive does not impose the duty to supply. The rationale behind this might be that the electricity is substitute for gas, thus, ensuring Affordability of electricity is sufficient to ensure the access of inhabitants to the “*successful*

²⁴ *Ibid.*

²⁵ For more details on what does this concept imply in practice (who are these disadvantaged persons and what are the problems that they have to tackle) see Part 2 and Part 3 of this paper.

²⁶ The resistance of some MS to introduce the protection of vulnerable consumers might be linked to the idea that it would benefit only some minority groups; of course, neither the definition nor the actual measures for the protection of vulnerable consumers thus can reflect this discriminatory approach. In addition, such measures might enhance the inclusion of the socially excluded groups.

²⁷ Art. 3, par 5. of the Electricity Directive; cited above, n.17.

participation in social and economic life"²⁸. Moreover, the substitutability for electricity would also exert some pressure on the reasonableness of prices of gas.

Before we go to the different national models of ensuring Affordability, it is necessary to clarify that this paper takes for granted²⁹ that the competition in regulated markets is *conditio sine qua non* for ensuring interests of consumers in energy markets. Thus, considerable impediment of competition in retail sector outweighed by the minor benefit of the consumers is considered to harmful for the consumers' interest in general.

2. 2. *The French Model: The Price Regulation through Default Tariffs*

One of the basic models of price regulation in 'liberalized' energy markets are the default tariffs³⁰. Default tariffs are the model where the free market model coexists with the price regulation, i.e. certain energy products maintain regulated price while the other products are priced on the basis of market forces. The case of France is perhaps the most illustrative.

The Retail energy market in France is fully opened to competition from 1 July 2007. The price of energy is set by a Minister of Economy and Energy³¹ (a Regulator acts as an advisory body) and should reflect the costs and appropriate profits of the supplier³². The only company supplying energy for regulated prices is EDF (electricity) and GAZ France (gas). The regulated tariffs are available to all consumers. Any consumer holding a contract with regulated price may maintain this contract (indefinitely). However, once a consumer concludes a free market contract, s/he can not conclude the regulated contract any more (non-reversibility principle)³³. In addition, any consumer moving into a newly created site (new building) may request a regulated electricity contract until 1 July 2010. The changes of proprietor of any site with a regulated contract do not affect the right to continue with the regulated contracts. The information as of Jan 2007, the regulated prices of electricity were 20% lower than the wholesale prices³⁴. Given the price trends in electricity markets as well five years contract between the government and the EDF/GAZ France on raising the price only for the rate of inflation³⁵, the gap between the regulated can only increase. The

²⁸ See The Communication from the Commission to the European Parliament and the Council: *Towards a European Charter on the Rights of Energy Consumers*, COM(2007)386 final, Brussels, July 2007.

²⁹ As concerns the relation between competition and consumers interest, there is no need to repeat what was said on number of occasions before. See generally: G. Bellantuono, F. Boffa, *Energy Regulation and Consumers' interests, Final Report*, July 2007 or EURELECTRIC: *Review of European Electricity Prices, Final Report*, 2005.

³⁰ This is the case in France, Spain, etc. See ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p12.

³¹ See ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p31.

³² See generally: Commission de Regulation de l'energie: Report to the DG Tren, July 2007. The price setting however considerably diverges from the outlined model. See ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p16. The last price set is from 2005 and according to the agreement between the state and the incumbent, next 5 years should not rise more than is the inflation rate.

³³ See eg. <http://www.energie-info.fr/pratique/comparer-offres#choix> or the Country report.

³⁴ See ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p32.

³⁵ The incumbents will rise prices until 2010 for more than the inflation rate. See Commission de Regulation de l'energie: Report to the DG Tren, July 2007, p89.

situation is slightly different in gas market, where the regulated price is higher than the free market price because it is linked to the fuel price³⁶.

The model adopted by France has very adverse impact on opening the market and development of the competition. To begin with, the co-existence of default tariffs and open market prices leads in principle to non-switching³⁷. The combination of non-reversibility principle (the risk of not being able to switch back if regulated contract proves to be cheaper), the considerably lower regulated prices (in case of electricity), the fact that the contract 'sticks' to the site indefinitely (implying that such site in future might have higher value if a very cheap energy is secured), the fact that only incumbents provide regulated contracts and finally generally high cost of switching in the deregulated markets³⁸ lead to the complete conservation of the French electricity market. The same is true for the gas market. Even much lower number of anti-competitive measures would suffice to considerably impede the development of competition.

2. 2. 1. Additional measures for the protection of Vulnerable Consumers in France

The French national report to the ERGEG for the year 2006 highlights that it was necessary to adopt additional measures to protect Affordability of Energy Supply for the consumers in precarious situations in order to ensure the Affordability of Energy for all groups of consumers. It started in 2001 by setting up a system "to preserve or guarantee access to electricity" for people in precarious situations³⁹. In 2005 it was supplemented by the rules governing the procedure applicable to the consumers in payment difficulties⁴⁰, introducing thus the special procedure for the disconnection. Consumers in financial difficulties may benefit from an energy maintenance service as well with the financial assistance with paying invoices together with additional services provided by the housing solidarity fund of the EDF and the Local Distribution Companies.

Furthermore, in 2007 the obligation was introduced not to disconnect the consumers for non-payment, from the 1st of November until 15th of March, in case a person has benefited from some of the schemes during the last twelve months. In 2006, the Energy Mediator was set up, with the competence to recommend the solutions to the disputes between consumers and energy suppliers and to propose changes in consumer protection system⁴¹.

France has thus introduced a comprehensive, though not perfect, set of rules for the protection of vulnerable consumers⁴². The reason is that the price regulation, thought

³⁶ See ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p17.

³⁷ *Ibid.*

³⁸ For discussion how the demand side, rather than supply side, competition should be promoted in the deregulated markets see Kati J. Cseres, *The Impact of Consumer Protection on Competition and Competition Law The Case of Deregulated Markets*, Amsterdam Centre for Law and Economics Working Paper No 2006-05. An interesting example from the Nordic Energy Markets see: Stephen Littlechild, *Competition and Contracts in the Nordic Electricity Markets*, Working Paper CWPE 0550 and EPRG 06, November 2005, p29.

³⁹ Decree 2001-531 of 20 June 2001.

⁴⁰ Decree 2005-971 of the 10 August 2005.

⁴¹ Commission de Regulation de l'energie: Report to the DG Tren, July 2007, p88.

⁴² In many respects the system lags behind the level of protection afforded to the UK consumers, giving to the consumers only so much to maintain monopoly position of the incumbents (low regulated prices lead to the

setting prices considerably lower than the market price, is in itself not a tool for addressing vulnerable groups of consumers, who either do not have enough funds to cover their energy costs or they lack the “payment discipline”; and though the energy is generally cheap, it does not mean that it is affordable to them. Therefore ‘taking the universal service obligations seriously’ means to target by regulation particular, vulnerable, groups of consumers whose problems are more fundamental than to be addressed solely by the low price of energy.

To sum up, the regulatory model adopted by France has effectively prohibited competition in the (retail) energy market; this is neither in line with EU energy policy nor in the best interests of the consumers (if we accept that the liberalization was introduced and is benefiting consumers). Adopting the comprehensive set of special measures for the protection of the *persons in precarious situations* (which gradually more and more resembles the UK system of protection of vulnerable consumers) points to the conclusion that the price regulation (alone) is not a measure which would be capable to ensure the Affordability of Energy for all groups of consumers.

For vulnerable consumers, the price regulation is insufficient as they clearly need better tailored measures than few percent lower prices than the open market price. Rather, the price regulation in France benefits foremost the non-vulnerable consumers. However, even in case of non-vulnerable consumer, the answer is not that simple. In particular, it is the non-vulnerable consumers that should benefit the most from the developed competition in retail market (enhancement of quality, services, various products etc.), which they are deprived of because of the non-existence of competition. In addition, the price regulation, which keeps the price lower than the market price, is environmentally unfriendly as it does not give proper signals as to the energy consumption and saving.

2. 3. *The Slovak Model: The Price Regulation through Price Caps*

Another widespread method of price regulation is price caps. In plain language, the price cap interferes with the free market price by setting a sum which can not be exceeded by the supplier⁴³. By the decree of the Regulator⁴⁴, Slovakia has adopted this method of price regulation.

Slovak Republic has opened the electricity market for the retail consumers from the 1st of July 2007, retail gas market has not opened to the competition yet⁴⁵. The Energy Regulator (URSO) has competence to decide to whether the final price regulation is necessary at all; if yes, then either to set the prices directly or to set the methodology for ascertaining the price⁴⁶. As already mentioned, the Regulator’s decrees have set that the price regulation

conservation of the market), but not wider protection against disconnection or effective dispute resolution mechanism (which would impose additional financial burden on incumbents). This observation supports the allegations that the main objective of some countries is not the protection of consumers but rather protection of their national champions.

⁴³ There is a number of ways how the price are actually set, eg. classic price caps, revenue caps, profit caps etc.

⁴⁴ Decree of the Regulator, No. 1/2007 Coll.

⁴⁵ See www.urso.sk.

⁴⁶ Act on regulation in network industries, No. 276/2001 Coll., from the 14th June 2001, § 12 (7).

would concern solely network services and the final price for the household consumers and provide a concrete methodology⁴⁷.

For the purpose of our discussion the interesting moment is that the Regulator sees it as necessary to protect consumers through price regulation. To what extent this decision can be plausibly justified on the basis of consumer protection (what is the reason cited in the report to the Commission⁴⁸) will be examined further.

Factors relevant for the analysis of the regulated price:

- (a) The price of electricity in Slovakia is 13 % higher than the EU average⁴⁹.
- (b) The income of households is considerably lower than in the neighboring states⁵⁰.
- (c) The highest proportion of the energy is produced in nuclear generation (68%) and hydro generation (12%), thus the energy production belongs among the cheapest⁵¹.
- (d) Slovakia is an exporter of electricity⁵².
- (e) The generation capacity is concentrated in the hands of one company⁵³. This company is the 2nd biggest generator in Central Europe, with profits over 3 billion Slovak Crowns (cca. EUR 100 mil.)⁵⁴.
- (f) All neighboring EU countries (and the customers of Slovak energy producers) have energy prices considerably below European average (more than 10%), which makes the difference in price between Slovakia and the neighboring EU MSs cca. 25%!⁵⁵.
- (g) Finally, the price regulation is in place, which on the one hand directly interferes into the freedom to ascertain basic contractual requisites, but on the other hand it should minimally ensure that the suppliers do not abuse the dominant position because the prices are controlled (if not to set them at affordable level).

Taking into account factors b) to g), Slovakia has majority of the preconditions to have very cheap electricity. However, Slovakia has the prices that are cca. 25% higher than in the

⁴⁷ Decree of the Regulator, No. 1/2007 Coll., which stipulates the degree of price regulation, § 2-5 and Decree of the Regulator, No. 2/2007 Coll., which stipulates the methodology for setting a price.

⁴⁸ See ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007, p14.

⁴⁹ See *Internal Market Fact Sheet Slovakia*, January 2007.

⁵⁰ Slovak Statistical Office: average income per person (depending on the size of household) is cca. EUR 300. <http://portal.statistics.sk/showdoc.do?docid=4618>. On the contrary, the same amount in Czech Republic is 30% higher. See [http://www.czso.cz/csu/2006edicniplan.nsf/t/B5002C52E0/\\$File/3012061a.pdf](http://www.czso.cz/csu/2006edicniplan.nsf/t/B5002C52E0/$File/3012061a.pdf) or [http://www.czso.cz/csu/2006edicniplan.nsf/t/B5002C52E6/\\$File/3012062a.pdf](http://www.czso.cz/csu/2006edicniplan.nsf/t/B5002C52E6/$File/3012062a.pdf).

⁵¹ See Communication from the Commission to the European Parliament and the Council: An energy policy for Europe {SEC(2007) 12} COM(2007) 1 final, Annex 2.

⁵² See Energy Mix Fact Sheet: Slovakia, 2007.

⁵³ Slovenské Elektrárne a.s., <http://www.seas.sk/en/> This factor rather indicates the economic power of the generator, and the logical strong political influence.

⁵⁴ Just for the contrast, the CEZ Group (not only production, which is the case here) will make profit this year cca. 2 billion EUR and it has raised the profit margin over 40% in the last accountancy period.

⁵⁵ Compare the Internal Market Factsheets for Austria, Poland, Czech Republic, Hungary and Slovakia. http://ec.europa.eu/energy/energy_policy/facts_en.htm.

neighboring states; despite all above mentioned factors, and particularly including the price regulation. Thus it seems that the only effect is of the direct price regulation in Slovakia is lower switching⁵⁶ on the one hand and disguise of the interest of competition authorities about the height of prices and potential abuse of dominant position., because of the official ‘rubberstamp’ of the Regulator.

2. 3. 1. Protection of (vulnerable) consumers in Slovakia

Looking into provisions of the Slovak energy law⁵⁷, we would unsuccessfully look for provisions aimed at the protection of vulnerable consumers. Art. 20 of the Energy Law (section on “Protection of the consumer”) does follow the Directives⁵⁸ in several ways: it requires suppliers to provide in a contract various information (on price, termination of the contract, the way how the compensation for the failure to provide the energy in agreed⁵⁹ quality is calculated, etc.), further the obligation of supplier to enable the household consumers to choose between different methods of payment as well as the obligation to inform the consumer about modifications 30 days before it takes effect.

What, however, the Slovak legislation did not implement are the rules on disconnection (termination is left fully to the contract), the protection of vulnerable consumers and on an appropriate dispute resolution mechanism. How serious are the consequences of the lack of regulation, in connection with high prices and low incomes, might be demonstrated by the numbers of disconnected household. In 2006 the number of disconnected households reached 40000⁶⁰. Considering that Slovakia has 4 million inhabitants, and a household in average is 3 persons, the number of disconnected reached 3% of the population⁶¹. This is an alarming data, especially if comparing to Great Britain (which is a considerably bigger country), where the number was 40 times (sic!) lower in the same year⁶².

Thus, the situation in this small country (4 000 000 inhabitants) is the following. Despite of the generally low incomes⁶³, the regulated prices of energy are above European average (EU 27 as well as EU 15). From this reason a greater number of persons would qualify as living in ‘fuel poverty’. All these people might need special treatment and help in order to

⁵⁶ Internal Market Fact Sheet Slovakia.

⁵⁷ Act on regulation in network industries, No. 276/2001 Coll., from the 14th June 2001.

⁵⁸ Directive 2003/54/EC of the European Parliament and the Council concerning common rules for the internal market in electricity and repealing Directive 96/92/EC and Directive 2003/55/EC of the European Parliament and the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

⁵⁹ There is no specific regulation of quality of electricity supply, thus the contract applies, i.e. in fact the standard contract term set by supplier.

⁶⁰ National Report 2006, Regulatory Office for Network Industries, Slovak Republic. The data for 2006 (35 000 of disconnections) are in the Report of 2007.

⁶¹ This was not an exceptional number cause by some peculiar situation. A year before, the number reached 35 000 disconnected households. See Slovak *National Report 2006, Regulatory Office for Network Industries, Slovak Republic*.

⁶² Ofgem' s Submission to the European Commission reporting requirements under Directives 2003/54/EC and 2003/55/EC, 2006, 2007, p90.

⁶³ See above, n52.

prevent disconnection⁶⁴, however, this is missing and the consequences are alarming. It follows that regulating prices is not only a device inappropriately tailored to help to solve the hardship faced by the vulnerable consumers, but may even raise it.

To sum up, the price regulation (not only in Slovakia) is not a measure that would undoubtedly advance consumer interests, disregarding the type of price regulation (default tariffs or price caps). If considering the retail competition a beneficial to the interests of consumers, the price regulation considerably disincentives switching (though price caps less than the default tariffs) and thus perpetuates current status in the market, without bringing the benefits of liberalization to the consumers. In case of Slovakia, the argument for deregulation is even stronger as the price regulation keeps prices considerably higher than in the rest of EU⁶⁵. If, on the contrary, the price was set lower than the open market price, such regulation might be environmental unfriendly because it does not incentive energy saving. Finally, the price regulation does not advance the protection of the vulnerable consumers, who need better tailored measures than eventually few percent lower price than in the open market price.

2. 4. The UK model: The targeted regulation

To understand the UK model of targeted protection of (vulnerable) consumers, it is indispensable first to portrait the oversight scheme in the UK energy market. Regulator, the Energy and Gas Market Authority (OFGEM⁶⁶) was established by the Utilities Act (2000) and its main objectives are to protect consumers and oversee the competition in the energy market. It has in principle full competence⁶⁷ over the competition in the energy market with some (less significant) exceptions for the Office of Fair Trading (OFT)⁶⁸.

OFGEM ensures consumers' interests primarily by ensuring effective competition (on the basis of Competition Act 1998, Gas Act 1984 and Electricity Act 1989), with the possibility to enforce the compliance with penalties ('Enforcement Orders'). OFGEM has further competence to enforce the compliance with the consumer protection legislation under the Enterprise Act (2002)⁶⁹.

⁶⁴ Not to worsen already high social exclusion of some vulnerable consumers. Namely, despite the statistics are missing, there is big possibility that many disconnected consumers belong to the Roma minority.

⁶⁵ It is 13% higher than the EU average, but also cca. 12% higher than EU 15 average. See Internal Market Fact Sheet Slovakia.

⁶⁶ Energy and Gas Authority is a collegial executive body, to whom is subordinated the Office of Gas and Electricity market (OFGEM). However, Authority and OFGEM are used interchangeably even by the regulator itself. See <http://www.ofgem.gov.uk/About%20us/Pages/AboutUsPage.aspx>.

⁶⁷ Similarly to the Slovak Regulator URSO, whose only statutory objective is the protection of the competition in the energy market, however, consumer protection has proclaimed as a primary objective in eg. Annual Reports for 2005, 2006.

⁶⁸ See OFGEM, OFT: Understanding the competition law: Application in Energy sector, 2005.

⁶⁹ Part 1, Chapter 8 of the Enterprise Act (2002).

The most important tool, respectively, the most used tool for the enforcement of consumer protection is the right to change the standard license conditions⁷⁰. Therefore, a very strong (op)position emerges when the license obligations are discussed - to keep / not to keep as much regulation as possible in the license⁷¹. As the competition stabilizes, however, the OFGEM tends to simplify regulatory environment through shortening and simplifying license conditions⁷², leaving more and more issues to the self-regulatory schemes⁷³. We will see that this trend will later be reversed by the legislator in respect of dispute settlement.

One of the most significant institutional decisions by the legislator was the establishment of an independent consumer protection body the 'Council for the Protection of Consumers' (Energywatch⁷⁴) by the Utilities Act⁷⁵. The Energywatch is a consumer advocate body, helping consumers also by direct advice relating to the Energy Supply – from the inability to pay to disputes with energy companies. The Energywatch does not have enforcement powers, these retains OFGEM. The main function of the Energywatch is to be 'consumer voice' when dealing with energy companies, compensating the lack of bargaining power on the side of consumers when dealing with these economically significantly stronger partners.

One of the major successes of the Energywatch was a Supercomplaint⁷⁶ to the OFGEM on the billing procedure, which resulted in the call of the OFGEM to the companies in the energy sector to establish an Energy Supply Ombudsman who would investigate the billing disputes and eventually award also financial compensation. OFGEM has also asked companies to restrict back billing⁷⁷, which forced many consumers into the debt, and finally to ensure that the contract terms are not unfair and biased in favor of energy companies. The OFGEM called the companies to comply with this recommendation by the means of self-regulation; otherwise the OFGEM undertook to change the license conditions in the same way.

The Energy Supply companies complied with the call of the Authority and the Energy Supply Ombudsman was established⁷⁸. The competence of Ombudsman has been gradually widened and today we can speak about general competence to decide upon any issue

⁷⁰ Under Gas Act 1984 and Electricity Act 1989; OFGEM has right to enforce them from 2002. See eg. OFGEM *Protecting customers: Ofgem's enforcement powers*.

⁷¹ See eg. OFGEM *Supply License Review - Final Proposals*, Ref: 128/07.

⁷² Simplification of the Supply License Condition took effect from 2008. *Ibid*.

⁷³ See eg. Energy Retail Association Safety Net: <http://www.energy-retail.org.uk/>.

⁷⁴ Such consumer 'watchdog' was also established in postal services; in telecommunications different path was taken from the beginning (self regulatory schemes Otelo). See Elizabeth France, *Ombudsman ~ their developing role in consumer policy and utilities*, CRI occasional lecture at University College London on 6th November 2006, p3.

⁷⁵ See Sections 17 – 27 of the Utilities Act (2000).

⁷⁶ See OFGEM Ofgem's response to the Super-complaint on billing processes made by the Gas and Electricity Consumer Council("Energywatch"), Decision, July 2005.

⁷⁷ Prepayment meters are installed usually by vulnerable consumers as prevention of disconnection. However, installing the old token meters, which were not updated after every change of price, lead to the back-billing of the consumers which effectively lead many of the consumers into debt. See Energywatch Annual Report 2006/2007.

⁷⁸ See <http://www.energy-ombudsman.org.uk>.

concerning the Energy Supply. Given the increasing number of cases decided, and the number of cases favorably to the complainants, it leaves impression that this self-regulatory arrangement has been a success⁷⁹.

Consumers, Estate Agents and Redress Scheme Act (2007), which came into effect in July 2008, brought great changes to the UK model: introduces the obligation to belong to a redress scheme on the one hand and tries to bring simplification of consumer protection scheme on the other. From October 2008, the Energywatch ceased to exist and a single, general consumer body (National Consumer Council) with greater competences⁸⁰ was established. A crucial change is establishment of a compulsory redress scheme⁸¹ to which every energy supplier and network operator will have to belong. The redress scheme will have the competence to decide disputes and assign compensation to the consumers where warranted. Which bodies will be approved as redress schemes will be decided by OFGEM. It is very likely that the Energy Supply Ombudsman will become an 'approved' redress scheme.

The UK again sets an important precedent for Europe. It has understood that the inexpensive/free, objective dispute resolution mechanism is absolutely crucial for "disciplining" the energy suppliers. The OFGEM's report stresses positive changes which the introduction of the Ombudsman scheme has brought for the corporate behavior of the members; the introduction of legal obligation to belong to such a scheme is on the one hand acknowledgment of the success of the existing self-regulatory measures⁸² (though finally the regulation was introduced).

2. 4. 1. Protection of vulnerable consumers in the UK

The regulation dealing with vulnerable consumers is concentrated in the Standard License Condition for Supply of Energy (SLC Supply) in sections 26, 27. Who belongs among the vulnerable consumers in the UK? ⁸³ Customers of pensionable age, disabled, chronically sick, further (partially) death or blind consumers (SLC 26) and consumers who in payment difficulties (SLC 27).

The central provisions deal with the consumers with payment difficulties whom threats debt and/or disconnection. The payment methods are one of the most helpful in the first stage of treatment of the vulnerable customer. The supplier is obliged, in case she becomes aware or has reason to believe that a Domestic Customer is having or will have payment

⁷⁹ Similarly Review of the Energy Supply Ombudsman, Ref: 281/07, November 2007, p4. See also http://www.energy-ombudsman.org.uk/links/3-5-case_study_bulletins.php.

⁸⁰ See Consumers, Estate Agents and Redress Scheme Act (2007), Part 1.

⁸¹ See Consumers, Estate Agents and Redress Scheme Act (2007), Part 2.

⁸² The Ombudsman will likely remain a redress scheme if it fulfill the requirements set by OFGEM. These requirements will be however set on the basis of existing successful models, thus necessarily also on the basis of Energy Supply Ombudsman. See OFGEM *Review of the Energy Supply Ombudsman*, Ref: 281/07, November 2007.

⁸³ Low income consumers (and consumers living in rural areas) are not among the vulnerable groups mentioned in the Supply license conditions. However, the concept of 'low-income' consumer embraces all kind of vulnerability and thus has been target directly by the regulation. See eg. Energywatch, Annual Report 2006/2007.

difficulty⁸⁴, to offer the consumer the payment deducted automatically from the social security benefit (so called *Fuel Direct*⁸⁵) received by that consumer. Further option for consumers, which suppliers have to offer is a payment by installments or through a prepayment meter; the consumers with payment problems should be also informed how to lower their electricity bills; and all the consumers must receive the information about these options.

According to the consumer protection bodies and organizations, the 'Fuel Direct', together with prepayment meters, is one of the most valuable possibilities for the vulnerable consumers⁸⁶ for ensuring timely payment and avoiding disconnection for debt. These measure could contribute to solving high disconnection numbers in number of MS (such as Slovak Republic or, as will be shown, the Czech Republic), where there is reason to believe that number of disconnected customers receive welfare benefits.

The SLC further prohibits the disconnection of a Domestic Premises for debt unless the supplier has not first taken all reasonable steps to recover the payment. Suppliers can not disconnect domestic premises in winter if supplier knows or has reason to believe that the customer is of pensionable age and lives alone or lives only with persons who are of pensionable age or under the age of 18. The following SLC concentrates on the legal regime of the prepayments meters, which were often installed by the vulnerable consumers as prevention to disconnection and are often the most expensive method of payment⁸⁷.

The regulation dealing with payment methods and disconnection is supplemented by various 'corporate social responsibility schemes' (eg. Home Heat Helpline) as well as the governmental social help schemes (PSR register, Winter fuel payments, Warm front), which create a comprehensive safety net for the protection of the most vulnerable consumers. Of course, we should not omit the Energy Consumer Ombudsman, which helps the consumers in case of inadequate billing actions of suppliers which were often the reason for getting into debts also by the vulnerable consumers.

The cumulative effect of all above mentioned measures is that the disconnection rates (foremost in gas, where they were considerably higher then in electricity) were substantially lowered⁸⁸. The figures have in 2006 The suppliers make their efforts to

⁸⁴ Mirror provision contains also the Standard Gas Supply Condition.

⁸⁵ Fuel Direct implies direct deduction of the payment for electricity and a proportional amount for outstanding debt directly from the social benefits. Prepayment meters on the other hand are usually installed instead of disconnection, when the consumer has to recharge its account for electricity in advance. See <http://www.energywatch.org.uk>.

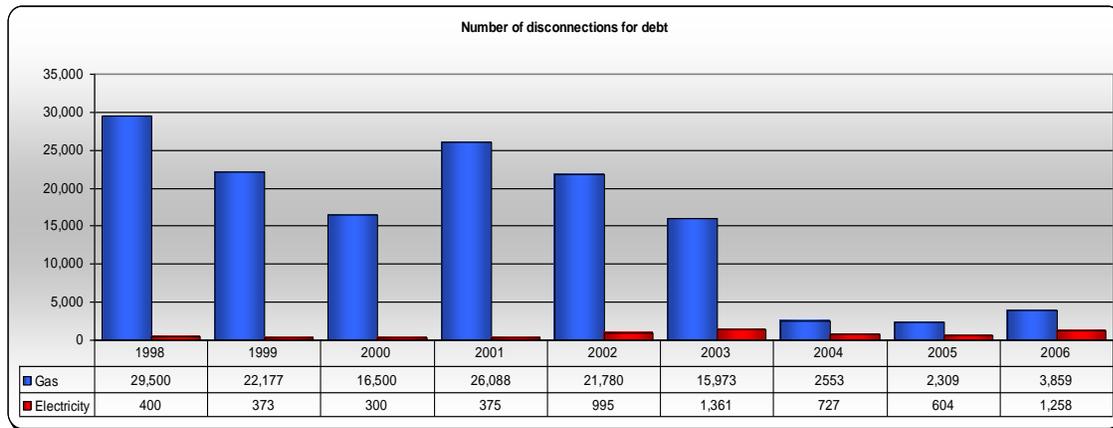
⁸⁶ See OFGEM Vulnerable Customers & Codes Workgroup – Final Report, June 2006, p41, 42.

⁸⁷ Great problem was posed by the old prepayment (token) meters, which were not reset timely, and thus this more expensive, but 'debt safe' method, used foremost by vulnerable consumers, lead to high debts of these consumers, because companies did not adjust them timely.

⁸⁸ See United Kingdom: Ofgem' s Submission to the European Commission reporting requirements under Directives 2003/54/EC and 2003/55/EC, 2006, 2007, p90.

distinguish between the persons ‘who can not pay’⁸⁹ and ‘who do not want to pay’; where only in the second case the disconnection is a proper enforcement mechanism. According the Energy Retail Association, no vulnerable consumer was disconnected from 2004⁹⁰. Thus again, not the regulation itself, but the warning that the regulation would be imposed was a good incentive for the suppliers⁹¹ to change their behavior and to conform to the (often before imposed) obligations.

Numbers of disconnections for debt:



Source: The Ofgem’s report to the Commission, 2007⁹²

OFGEM expressly states that once the efficient self-regulatory measures are in place, it prefers it to the regulation⁹³. From the institutional standpoint, the combination of consumer protection obligations with the obligation to protect and develop competition in energy markets seems to contribute to the effective balancing between the tools triggered by each of these, sometimes (seemingly) opposed objectives⁹⁴.

In conclusion, the protection of vulnerable consumers – particularly the regulation of disconnection and an efficient dispute resolution mechanism – seems to be crucial tool for ensuring Affordability. The case of Slovak Republic shows that the non-regulation could

⁸⁹ See <http://www.energy-retail.org.uk/preventingdisconnection.html>. The energy suppliers have also established within the corporate responsibility schemes for the vulnerable consumers. See eg. <http://www.britishgas.co.uk/about-british-gas/what's-important-to-us/customer-commitment.html>.

⁹⁰ <http://www.energy-retail.org.uk/preventingdisconnection.html>.

⁹¹ The adoption of the self-regulatory measures needed indeed few scandals and following pressure on suppliers threatening by the complete ban on disconnection. The tragedy that generated pressure concerned Mrs. and Mr. Bates who were disconnected and after some time found both dead in their apartment. The cause of death was hypothermia.

See <http://news.bbc.co.uk/1/hi/england/london/3343469.stm>.

⁹² Ofgem’s Submission to the European Commission reporting requirements under Directives 2003/54/EC and 2003/55/EC, 2007.

⁹³ See OFGEM *Vulnerable Customers & Codes Workgroup – Final Report*, June 2006, p36.

⁹⁴ There are diverging views on this point. Haker and Waddams argue that special competition authority sets lower standards than the general competition would as it unconsciously colludes with the firms. Cited above, n92.

have very undesirable consequences and thus comprehensive set of tools should be put in place to contribute to provide for the Affordability of Energy Supply for all groups of consumers, in particular for those who are not able to make use (so simply) the advantages of the liberalization of the energy sector.

3. Affordability through Competition?

3.1. The Czech model: No Regulation

The Czech Republic has opened its energy market entirely from the 1st of January 2006⁹⁵. The Energy law⁹⁶ designated the Energy Regulatory Office (ERU) as an independent regulatory agency (with cca. 100 employees) to oversee the energy market. ERU has shared competence to oversee the competition in energy market with the Competition Authority (UOHS), where ERU has the competence only to 'support' the development of full competition in the future⁹⁷ (and maximally can impose fine for the abuse of economic position under the Act on Prices), while the UOHS retains the rest of competence for the protection of competition and it enforces of the Art. 81 and 82 of the Treaty. Regarding the competences of ERU in consumer matters, it is very limited and stops at the protection of consumer interests in network matters (the regulated part of the market (transmission and distribution))⁹⁸.

Another body investigating breaches of energy regulations is the State Energy Inspection (under the control of Ministry of Trade). This inspection cooperates with ERU, also in consumer matters, and investigates breaches by the suppliers 'in the field'. The institutional framework is completed with the Czech Commercial Inspection (CCI), a general consumer protection body, institutionally designed to investigate the breaches of consumer protection law; thus also majority of consumer issues arising in energy market (as there is practically no sector specific consumer protection). However, in reality the CCI tends to shift all the complaints to the ERU because of the 'highly specific nature of the market'. Given that ERU does not have competences to examine or penalize the breaches of consumer law, it can only mediate between the consumer and supplier. This means that even flagrant breaches might remain unpunished.

The extent to which retail market competition has evolved is an important indicator to what extent eventual positive consequences of the competition might have substituted the lack of regulation. However, the markets remain highly concentrated and customer switching has been limited to date, with mainly large energy consumer switching⁹⁹.

The universal service obligations were transposed loosely by the Czech Republic (CR). The CR claims that it has implemented the universal service obligations by the Act No. 670/2004, which amends the existing Energy Act¹⁰⁰. In reality, the CR has implemented

⁹⁵ Act No. 458/2000 Coll. on business conditions and supervision in energy sector (Energy law), §21/2/ e.

⁹⁶ *Ibid.*, § 17.

⁹⁷ Supreme Administrative Court, Decision of 18th December 2007 (Komp 3/2006-51).

⁹⁸ Energy Law, § 17.

⁹⁹ Energy Mix Fact Sheet: Czech Republic and Internal Market Fact Sheet Czech Republic.

¹⁰⁰ See *The Czech Republic's National Report on the Electricity and Gas Industries for 2006*, July 2007, p43.

only few provisions. These are: obligation of the supplier to contract in case the consumer has fulfilled all the requirements set by the conditions of the supplier¹⁰¹, the provisions on supplier of last instance¹⁰², the obligation to inform the consumers of the modification of the contract terms at least two months in advance (in the case of electricity¹⁰³) and at least one month (in the case gas¹⁰⁴), the obligation to offer 'fair and non-discriminatory selection of payment methods'¹⁰⁵, the obligation to include in the electricity bill the information about the source of electricity and a reference to the public source of information about the environmental impact of these, the obligation to keep the parameters of supply and service quality that are set out in an implementing regulation and the right of the consumer to the compensation in case the quality does not reach necessary level¹⁰⁶ and the proportion of the contribution of the consumer for the connection to the distribution network¹⁰⁷.

3. 1. 1. The non-transposed consumer protection requirements of the Second Energy Directive

Much more interesting is to look at the provisions of the Second Directive that were not transposed by the Czech legislator.

Thus, the Czech Republic did *not* introduce any specific measures for the protection of *vulnerable consumers*, nor did it introduce any regulation concerning the *disconnection* procedures from electricity or gas supply (the only provisions dealing with disconnection sets that the theft of electricity as well as non-payment are the reasons for the disconnection).

As regard the provision on information to be included in the Energy Supply contract¹⁰⁸, the following items from the Annex 1 of the Directive do not have to be included in the contract:

- (a) the information on the service provided and their quality levels
- (b) termination of the contract
- (c) refund arrangements in case of failure to satisfy quality requirements (the ERU published a decree for this purpose¹⁰⁹, however, there is no requirement that such information must be included in the contract)
- (d) information on methods of initiating procedures for settlement of disputes (the legislation does not provide for the requirement)

Further regulation that was not transposed or was transposed incorrectly/insufficiently:

- (e) wide choice of payment methods

¹⁰¹ Energy Law, § 35.

¹⁰² Energy Law § 12a; until the end of 2007, no consumer has used his right to the supplier of last instance. See *The Czech Republic's National Report on the Electricity and Gas Industries for 2006*, July 2007, p44.

¹⁰³ Energy Law, § 21(2) d.

¹⁰⁴ Energy Law, § 63 (1) a.

¹⁰⁵ Energy Law, § 21 (2) c.

¹⁰⁶ Energy Law, §17 (7) a.

¹⁰⁷ Energy Law, §17 (7) d, l.

¹⁰⁸ Annex 1 of the Electricity Directive 54/2003/EC.

¹⁰⁹ Decree No. 540/2005 Coll., on quality of the supply and connected services.

- (f) transparency of prices
- (g) dispute settlement mechanism

Given the lack of regulation, the general consumer/ contract law applies in these instances. This means that the additional information duties (though not strictly corresponding the above mentioned ones) apply only in case of distance contracts and doorstep contracts; for the rest, general contract law applies and only minimal information requirements. Even more contra-productive is that there is no requirement to include (in the bill or) at least in the contract any reference to the Regulator; calculator or possibility to complain to the regulator.

3. 2. The position of (vulnerable) Consumers in Czech Republic: the problems

The CR has opted for a 'third way' how to go about Affordability question. Namely, it did not address the question of Affordability by any particular regulatory measure; formally established competition in combination and the competition law have to suffice.

How does this system works had to be examined on bottom-up, on the basis of consumer complaints. This paper will therefore demonstrate the implication of non-regulation on the concrete problems that the Czech consumers face in the energy market; on the basis of complaints of the consumers to the Energy Regulatory Office (ERU) in 2007 and the scarce case law dealing the consumer protection in energy markets.

Regrettably, we miss a reliable indicator of the level of consumer, and foremost vulnerable consumers protection, in CR. Namely, ERU does not dispose of the information how many households are yearly disconnected, because such information is not required from the suppliers (contrary to Slovak URSO or Energywatch); thus the information regarding number of consumers facing the most adverse consequences of the lack of any regulation is not available. Despite all the attempts from, the 3 major distribution companies refused to disclose this information.

I will therefore try to roughly estimate the number of disconnected households on the basis of available information. The national newspapers 'Mlada fronta dnes' has published the information that the distribution company (E.ON.) has disconnected already 1200 households from the beginning of the year. E.ON. has cca. $\frac{1}{4}$ of the market¹¹⁰ and the period lapsed from the beginning of the year is cca. four month. If all suppliers have the same disconnection behavior, the number will reach cca. 15 000 households disconnected a year. However, it is very likely that the number might be even higher because the empirical research has shown¹¹¹ that the most problematic service provider is incumbent company CEZ distribution. Moreover, given generally lower switching in the low-income part of the society, the vulnerable consumers have likely stayed with the incumbent.

¹¹⁰ See http://www.eon.cz/cs/corporate/profile/eon_distribuce.shtml.

¹¹¹ In March 2008, I had an opportunity to undertake empirical research at the ERU. The main focus of research was on consumer complaints which should have enabled me to discover the pitfalls of the regulatory regime.

3. 2. 1. The results of Empirical Research and Recommendations

In March 2008, I have undertaken empirical research at the ERU to examine complaints the consumer complaints after the liberalization of the retail market. I have examined 99 complaints put forward in 2007, 19 of them were assessed as well-founded. In 2006, ERU received 150 complaints, 14 of them were assessed as well-founded. Under the currently set legal framework, where the most of the issues of consumer's protection is let to the general consumer law, where ERU does not have any competence, the only feasible venue (and thus referred to by the regulator) for solving these complaints is judiciary. For most of the consumers, this is not a real option; what is even more valid in case of vulnerable consumers.

It is evident from the outset that whatever the legal framework – whether there is sector specific regulation or general consumer law applies – a crucial starting point is existence of an inexpensive, quick and fair dispute resolution mechanism. Even the most elaborated regulation is not sufficient if the consumers do not have a feasible way to enforce it. An alternative to setting an independent dispute resolution mechanism, though not an equivalent alternative, would be empowerment of the regulator to perform a dispute resolution tasks. This would however require number of changes; from competences, budget, to the personnel structure of the regulator.

3. 2. 2. The price of energy

Number of consumers' complains concerning the height of energy prices are lodged, predominantly by older consumers. ERU tries to respond by explain how the prices are set in general: the price for the use of natural monopolies is set by the Regulator (and this makes cca. 40% of the price), the rest is left to the competition. The regulator however has no possibility to advice consumers to make use of some special social scheme or 'corporate responsibility' scheme or a scheme, which would advice them on saving.

The price of energy might pose significant burden on some consumers, who would have benefited from schemes similar to the UK examples. Relying in this regard on the corporate social responsibility schemes, would render such measures nearly cost-less¹¹². Eventually, a scheme of a fond financed by the contributions of the companies might be an alternative. However, for any of the above mentioned solutions, the regulation would have to put in place to 'help' the suppliers to develop the tradition of corporate-responsibility and self-regulation.

3. 2. 3. Disconnection

Unwanted disconnection is one of the most adverse consequences that the consumer might face in the energy market; and a primary aim of the measures ensuring Affordability is prevention of disconnections. As already mentioned, the Czech Republic did not implement any measures which should safeguard the interest of consumers in connection to disconnection as required by the Art. 3 (5) of the Directive. Thus the regulation of

¹¹² The prices are increasing considerably every year. See Fact Sheet Internal Market in Energy: Czech Republic.

disconnection is left to the contract; drafted in advance by the energy companies. For illustration, the standard conditions of the incumbent company group CEZ provide that the supplier has right to disconnect a customer in case of 14-days delay of payment.

The empirical study has shown several types of problems that may result from such a short termination notice. Some customers were disconnected because of error in data transfer between the old and new supplier. Others were disconnected due to the error in the database of their supplier. In any case, customers had to pay the reconnection fee if they wanted to be reconnected and only then they could start any dialog with the supplier to find out what in fact happened. There is no much evidence how many complaints of this kind is solved with between the companies and consumers themselves, however, complaints that reach ERU show that the companies do not try to investigate complaints in an objective way. And if a mistake was found at the side of company, the customers still obtains maximally a refund of the reconnection fee and eventually an apology.

Another group of disconnected consumers are the non-diligent consumers (customers, which do not use bank collection for the payment – often elderly, low income consumers) if changing their residence or for other reason left for a longer time, might find themselves disconnected shortly after the bill was sent.

Finally, great number of disconnected consumers simply does not have necessary amount at the moment the payment is requested. These customers will be disconnected and thus they would not only have to pay their debt, but also reconnection payment, which will not enhance their economic situation.

Pressing step for the enhancement of the consumer protection, which might not need immediate action of the legislator, would be a voluntary Code of Practice for Disconnections (issued by the regulator or, if feasible and swift, by a self-regulatory body), to which the companies could adhere on a voluntary basis. This Code would set the procedure, which would have to be followed before disconnection: contacting consumer who finds herself in payment difficulties, finding out where the problem lies, giving the advice on consumption and set different payment methods (eg. 'Fuel Direct'), taking into consideration whether consumer is able to pay (eg. by deduction from the social benefits etc.) or whether the consumer can not pay and in this case employ either adequate corporate responsibility schemes or governmental social schemes (if put in place)¹¹³.

An obligation to enter into the personal contact with the consumer should be required, as it is an important tool for avoiding situations where a consumer is disconnected because of change of residence or because of the longer holidays. Such personal contact would be crucial for discovering whether the consumer is not able to pay or not willing to pay, thus to employ disconnection as enforcement only where fair and in all other cases try to find an alternative solution. Today some of the companies contact the consumer in writing before disconnection. This however is not sufficient to remove neither the first type of problems

¹¹³ See also Energy Retail Association: Debt and disconnection of energy supplies, June 2007 <http://www.energy-retail.org.uk/documents/DebtandDisconnectionFINAL.pdf>.

nor for vulnerable consumers, it is not only because the number of letters would not be received or understood, but also because vulnerable consumer would need advice and help rather than a formal notice with threat of contractual penalty and disconnection.

Equally important would be establishing a dispute resolution mechanism; the statutory establishment of an institution like 'Energy Ombudsman' (who might be funded by the energy companies on the same basis as the UK Energy Ombudsman), which would be free, quick and fair and competent to award compensation if warranted. The compensation would be not only satisfaction for a consumer but also an incentive for suppliers to improve its services.

3. 2. 4. Billing

The European Commission, in its *Communication Towards a European Charter on the Rights of Energy Consumers*¹¹⁴ advances the idea that the European has to go wider in tackling fuel poverty and "*The situation of individual consumers in vulnerable financial situations may further aggravate through incomprehensible billing arrangements or unjustified metering arrangements.*"¹¹⁵

In the Czech Republic, the most common complaint concerns sudden increase in the sum billed for the energy. Complaints show that these cases are financially (and emotionally) extremely burdening for consumers. The greatest number of consumers complain that at one point the bill they received has increased without any clear reason (no new electric devices in the household, no new inhabitants, etc.) more than 10 or 20 times.

The whole responsibility lies on consumer – and only bias in electrometer liberates a consumer from the responsibility. The only option a consumer has is to invite a technician (of the supplier), who will control whether the electrometer is free of bias. If a technician finds out that the electrometer is well functioning, the consumer has not only to pay for the bill, but also for the visit of technician. The consumer has also an option to invite an independent expert, which is also not cost-less. Moreover, ERU, similarly to Energywatch¹¹⁶, does not recommend the invitation of an independent expert as the increase is randomly caused by bias of electrometer (according to Energywatch, only in 20% cases¹¹⁷).

The suppliers do not enter into any discussion as to why such a great increase; it only offers the payment calendar to the consumer. On the other hand, in similar cases the UK Energy Supply Ombudsman would require that the energy supplier provides first for a free in-house examination, but eventually also for an independent examination of the electrometer (if the in-house did not show the bias), as well as to send an expert to the consumer's household to give an informed advice on energy saving¹¹⁸.

¹¹⁴ Communication from the Commission to the European Parliament and the Council: Towards a European Charter on the Rights of Energy Consumers, COM(2007)386 final, Brussels, July 2007.

¹¹⁵ *Ibid.*, p4.

¹¹⁶ See Energywatch, FAQ: http://www.energywatch.org.uk/your_questions/index.asp.

¹¹⁷ *Ibid.*

¹¹⁸ See Energy Supply Ombudsman, Bulletin 11/2008, p9.

Leaving all the responsibility on the consumer, without any 'equity' arrangements, might have tragic consequences for some consumers. I have examined a case, where such a sudden increase of the bill has happened to the customer of incumbent company CEZ, a pensioner, living alone in remote area, who had the same consumption for more than thirty years.

The only offer of CEZ to this 'super-vulnerable' consumer was payment of debt in installments; otherwise the CEZ threatened him with disconnection. CEZ was unwilling to show any understanding for the situation and/or to lower the bill. The financial burden for this pensioner was extreme, however, the only response that ERU could give to such consumer is there is that CEZ has acts in accordance with the law and there is nothing that can be done. Thus, this person was either disconnected (ERU does not have further information) because he could hardly pay the installments from a very low pension; or he would pay the debt to a gigantic energy supplier and not afford a reasonable diet until the end of his life.

This exposes the level of 'corporate social responsibility' of the Czech energy suppliers, but foremost the serious deficiencies of legal framework. Thus the recommendation for the legislator (expect for the recommendations discussed in the previous part) would be to complemented with a plea for establishing such dispute resolution mechanism which would be able to offer relief in this type of cases; solely formalistic approach by the dispute resolution mechanism (especially if the fundamental changes are not done with the regulatory framework) could hardly satisfy the requirement to protect vulnerable consumers and thus ensure the Affordability.

3. 2. 5. Theft of energy

The theft of energy increases price for the honest consumers and thus poses some risk for the Affordability of Energy. Depending on legal framework, the companies have different degree of incentives to detect and prevent theft. The UK faces the problem of lack of investigation of the energy theft¹¹⁹ and it undertook the steps to raise the incentives of the companies to detect theft. On the other hand, the Czech Republic has inherited harsh "punitive damages"¹²⁰ for the theft of energy from the monopoly era, where there were intended to deter the theft as otherwise the detection was low; however, such high damages have turned into an over-incentive for the detecting theft by the suppliers stemming from the general change in incentives of the actors in the energy field have changed after the privatization. This raises on the one hand constitutionality concerns (which will be discussed in the next part) and on the other hand, the over - incentive of the companies to 'find' as many unauthorized users as possible would lead, as it will be shown below, to the serious Affordability consequences for many consumers.

¹¹⁹ See OFGEM Theft of electricity and gas, January 2005, p 29 ff.

¹²⁰ Last regulation is the Decree of the ERU, 51/2006, which stipulates some conditions for Energy Supply and a methodology for ascertaining the damage inflicted on the supplier by the unauthorized power use.

A problem connected to the theft of energy, probably peculiar to the CR, arises in some cases of sudden increase in consumption. Number of consumers allege¹²¹ the existence of a very scary practice of the suppliers technicians, where the technicians, while being unaccompanied by the electrometer (in one case after leaving from the apartment and then coming back), have suspiciously found a mechanical damage to the measuring instrument (e.g. a little hole somewhere on the electrometer)¹²². This finding has made from the complainants „unauthorized power users”, which leads to disconnection and obligation to pay high damages¹²³ to the supplier (usually in thousands of Euros)¹²⁴.

Persons complaining about this practice describe it in very similar terms, belong to the different social strata and they are from different parts of the Czech Republic. There is some evidence which points to the conclusion that the (technicians of) CEZ are involved in this illegal practice¹²⁵. The reason might be that the company has considerable financial interest in “detecting” unauthorized power users (because of indeed high ‘punitive’ damages), which motivates it to further financially motivate its technicians for every detection. Possibility of existence of such practice however shows more structural problems, because

¹²¹ According to the NGO PPPOS, more than 70 consumers have contacted them to lodge a criminal complaint, and the number of complainants is permanently increasing. The latest news in this respect is that the Police Department for the detection of organized crime has charged 32 employees of CEZ Mereni. See <http://aktualne.centrum.cz/ekonomika/domaci-ekonomika/clanek.phtml?id=621699>.

¹²² The Czech Constitutional Court, in its Decision no. I.ÚS 202/06, of 20th September 2006, stroke down the decision of the Supreme Court with the explanation: The regulation in case of illegal power use is already strongly benefiting the electricity supplier. Disregarding the claims of the complainant in the particular case lead to the absolute impossibility to prove “not guilty” (“illegal power use” is dealt with under the criminal charge of Stealing). Here the complainant was able to show that the technicians of CEZ when being unaccompanied by the electrometer might have caused the damage intentionally and had motive for that – CEZ (according to one of the technicians involved) “stimulates” the number of found illegal uses through the salary of technician.

¹²³ The damages for the illegal power use are set by the Decree of ERU No 51/2006 and the Law No. 526/1990 Coll., on prices, which are set in punitive height (it usually does not even remotely correspond to the actual – prior use of energy by “illegal power user”).

¹²⁴ Most, if not all, of the complaints are directed to the technicians of the CEZ. CEZ group has a “commando” for the detecting of unauthorized power use: ‘Division for discovering non-technical loses’. A consumer protection NGO (Sdruzeni pro pravni poradenstvi a pomoc) has lodged a criminal complaint on the CEZ Mereni; the CEZ has responded by filling a civil complaint against the NGO for harm of reputation and the compensation of 200 000EUR. See:

http://zpravy.idnes.cz/cez-zazaluje-stezovatele-jejich-pravnik-to-povazuje-za-chybu-puj-domaci.asp?c=A080526_134619_domaci_jw and
http://zpravy.idnes.cz/foto.asp?r=domaci&c=A080415_181301_domaci_jw
http://zpravy.idnes.cz/ministerstvo-se-zacalo-zajimat-o-metody-inspektoru-cez-pju/domaci.asp?c=A080402_220348_domaci_jw.

¹²⁵ As already mentioned the latest news (from the 10th November 2008) is that the Police Department for the detection of organized crime has brought criminal charges against 32 employees of CEZ Mereni, s.r.o. They have been charged for the extortion (they threatened them with the immediate disconnections if they do not sign the recognition of high amount of debts to the CEZ, or force them to visit the premises of CEZ Mereni, in the NorthWest of Czech Republic during night hours, etc). See <http://aktualne.centrum.cz/ekonomika/domaci-ekonomika/clanek.phtml?id=621699>

CEZ however threats back that they will from this moment start to make use of all the possibilities the regulation gives it and take the illegal power users, who are objectively responsible. to the court (they will not any more try to agree with them). <http://aktualne.centrum.cz/ekonomika/domaci-ekonomika/clanek.phtml?id=621845>.

the legal framework puts the dominant supplier in an over-powerful position: by setting punitive damages, shifting the burden of proof on the consumer, but also allowing the immediate disconnection of such illegal user, and consequent conditioning of reconnection by the 'validation of debt'.

What increases concern is that the electrometers are in general freely accessible – at least to a certain group of persons, thus a very unfortunate combination emerges: a company can claim in principle punitive damages (which are the legacy of communist and post-communist monopoly era), no proof of causal nexus is required (Objective Responsibility) and the measurement instrument is freely accessible.

Similar concern can be also raised in respect of the general responsibility for the measuring instruments. As already mentioned, these instruments have to be freely accessible to the technicians of the suppliers – because of safety measures – and are generally freely accessible at least to the group of people (e.g. persons living in the same entrance of a block of flats and their visitors). In case of any damage to the instrument (e.g. harm to the easily removable seal), the consumer is obliged to pay punitive damages¹²⁶, without eg. having ever seen its electrometer.

3. 2. 6. On the constitutionality of the regulation

The constitutional dimension of Affordability of Energy Supply is a question that would deserve deeper examination; this however can not be done in this paper. Nonetheless, one facet of the constitutional dimension will be touched; namely to what extent the Czech regulatory framework is able to violate the property rights of the consumers and have thus the directly impairing impact on the Affordability.

The Czech Constitutional Court issued numerous of decisions on the question of objective responsibility for the damage of measuring instruments and connected unauthorized power use as well as the punitive damages which the offender has to pay¹²⁷. The Court has admitted that the regulation of 'unauthorized power use' is strongly unbalanced for the benefit of the electricity supplier¹²⁸.

The consumer is objectively responsible for all damage that occurs to the metering devices, to the extent that such damage might qualify as unauthorized power use. The situation of the 'offender' is aggravated due to the practically punitive damages, which do not only endanger her financially, but the height of damages qualifies alleged theft as a criminal offense. The Court has however never seriously addressed the question of proportionality of regulation; in particular after the liberalization of the market. It satisfied itself with the

¹²⁶ Again the height of damages for harming the seal (cca. 600EUR) does not correspond to the actual damage.

¹²⁷ See Czech Constitutional Court, Decision no I.ÚS 2512/07 of 05th March 2008, Decision no. III.ÚS 396/06 of 31st May 2007, Decision no. II.ÚS of 12th October 2006, Decisions no. I.ÚS 202/06 of 20th September 2006, Decision no. III.ÚS 585/05 of 03rd August 2006, Decision no. I.ÚS 212/03 of 11th May 2006, etc. Interestingly, all the cases come from constitutional complaints – there is not a single one coming on different legal basis.

¹²⁸ The Czech Constitutional Court, in its Decision no. I.ÚS 202/06, of 20th September 2006.

justification that such regulation is necessary for maintaining voltage of distribution networks¹²⁹.

In the only decision favorable to the claimant until present¹³⁰ the court held that, under such unbalanced regulation, disregarding evidence of the complainant, which showed that the damage might have occurred by the intentional act of the technicians, would lead to the absolute impossibility to prove “not guilty”¹³¹, what renders such interpretation unconstitutional. (In this case, the complainant was able to show that the technicians of CEZ, when being unaccompanied by the electrometer, might have caused the damage intentionally. In addition, in the proceedings one of the technician admitted that CEZ financially “stimulates” technicians for every detected unauthorized power use. The general courts, including the Supreme Court, have absolutely disregarded this evidence.)

Despite stepping in for the protection of minimal fair trial rights of the “illegal/unauthorized power users”, the Constitutional Court has never seriously addressed the question regarding the constitutionality of a criminal offense of natural persons on the basis of objective responsibility as well as the constitutionality of regulation setting the methodology for ascertaining the damages for the unauthorized power use (in particular whether such excessive damages are proportional to the danger which threatens the ‘maintaining voltage of distribution networks’) but foremost whether the change of subjects of the relationship between the suppliers of energy and their users (from ‘state x user’ to ‘private supplier x consumer’) and different incentives these have.

Namely, during the monopoly era, the state owned monopolies had utterly different incentives from the private companies today. The height of damages on the one hand was supposed to have deterring effect on potential thief (as state monopolies in general did not have many incentives to detect the theft), and, on the other hand, it was not expected that the state owned monopolies would anyhow abuse such institute. However, today, the companies have different incentives and, as has been show in the decision of the Constitutional Court, they try to use favorable legal framework for their own benefit. Thus what might have been found proportional during the state owned monopolies (though this might also highly contestable) might not be proportional in the liberalized markets any more. This question has never been addressed by the Czech Constitutional Court.

4. Conclusion

Why do states intervene to ensure the Affordability of electricity rather than some other crucial good/service? On a more general level, the reason is crucial role the energy plays in the contemporary society for the inclusion into the social and economic life – for the benefit of individual and the society in general¹³². There is number of other important (and less

¹²⁹ *Ibid.*, para. 18.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, para. 21.

¹³² The reasons might be phrased equally well in distributive as well as in efficiency terms. As it concerns efficiency, the non-inclusion might be very costly for the economy (eg. Roma villages in Slovakia) as ‘*the economic growth in an information society is depended on an educated labor force and on an advanced communications network reaching all homes*’ Robert Loube: *Public Interest Regulation, Common Costs, and*

abstract) reasons prompting intervention, such as the lack of efficient competition in the energy market, diametrically different economic power of the actors involved, the need for continual supply and finally the disproportionate 'enforcement' power of energy supplier (the threat of disconnection).

This paper has explored different strategies of addressing the question of Affordability – both through Regulation (through *price regulation* as well as through *targeted regulation*) and through Competition. What are the lessons to be drawn? First of all, the price regulation seems not to correspond to what is claimed to be achieved by it. Slovakian example seems to be a *prima facie* abuse of the whole idea behind the price regulation (“the protection of consumers”), where the regulation disadvantages the consumers rather than benefit them. The prices are considerably higher than in the other neighboring MS, despite Slovakia being a net exporter of electricity produced from the cheapest sources. The only effect of the regulation seems to be taking the behavior of the companies out of the reach of competition authorities.

In France, the regulation indeed benefits consumers in general to the extent that the prices are lower than the market price would be (because the energy comes from cheap nuclear sources EDF can profit despite keeping the price low), however, at the expense of conservation of the market and the protection of the national champions. Despite the price regulation, France still had to introduce the targeted protection of vulnerable consumers because the price regulation does not suffice for the effective protection of the (vulnerable) consumers.

The Czech Republic has taken a very problematic path of non regulating majority of the aspects of supplier-consumer relationship in energy sector. Concretely, it decided to leave great majority of the contractual issues in the relation between companies and consumers to the market and rely only on the competition law and judicial enforcement mechanism. And it turned out not to work. The disconnection rates are too high, the prices are high and getting higher¹³³, the too pro-supplier regulation in relation to the theft of energy has been abused - and all that at the expense of the consumers, foremost the vulnerable ones. All these problems are however further neglected as the whole political climate is very *anti-protective*; the elites from the both sides of political spectrum are unwilling to introduce “*communist-like*” protective measures. This “communist legacy” however only strengthens the position of the incumbents, which is hardly a ‘liberal’ outcome.

The UK model has proved to be the best tailored to guard the interests of the vulnerable consumers, while simultaneously respecting the competition and not burdening the welfare system unnecessarily. It is perhaps for these reasons that the UK model was a source of inspiration for the Second Energy Package. Therefore no ideological biases should prevent the New MS to see the benefits of the proposed legislation (if we are to disregard the legal

Universal Service: in Miller, W. J. Samuels (ed): *The institutionalist approach to public utilities regulation*, Michigan State University Press, 2002, p242.

¹³³ See <http://aktualne.centrum.cz/finance/penize-a-investice/clanek.phtml?id=622923>. The incumbent company CEZ has increased their profit by 40%, to 2 billion EUR for the 2008. See <http://aktualne.centrum.cz/b2b/firmy/clanek.phtml?id=622021>.

obligation to implement the EU legislation) and to implement it faithfully. And if this is not going to happen, it is on the Commission to ensure the enforcement of correct implementation of EU legislation; not solely because of the consumer interests (as this has always been one of the priorities of the EU) but to avoid undermining the legitimacy of the whole liberalization process.

Summing up, the “pareto optimal” for the energy sector seems to be: price competition, the protection of vulnerable consumers, effective oversight and effective alternative dispute resolution mechanism. All other solutions either infringe the interests of consumers directly or indirectly through infringing the competition (the prices, services and the choice).

Bibliography

M. Armstrong, D. E. M. Sappington: *Regulation, Competition and Liberalization*, EconWPA, 0505011, May 2005

G. Bellantuono, F. Boffa, *Energy Regulation and Consumers' interests*, Final Report, July 2007

M. Cave and P. Crowther, *Co-ordinating regulation and competition law ex ante and ex post* in: *The Pros and Cons of Antitrust in Deregulated Markets*, Swedish Competition Authority, September 2004

K. J. Cseres: *The Impact of Consumer Protection on Competition and Competition Law The Case of Deregulated Markets*, Amsterdam Center for Law & Economics, Working Paper No. 2006-05

Energy Regulation Regional Association, *Price Setting and Revenue Regulation*, Open Society Institute, Budapest, 2002

S. Fankhauser and S. Tepic, *Can poor consumers pay for energy and water? An Affordability analysis for transition countries*, Working Paper 92, European Bank for Reconstruction and Development, May 2005

Elizabeth France, *Ombudsman ~ their developing role in consumer policy and utilities*, CRI occasional lecture at University College London on 6th November 2006

J.-M. Glachant, *Les marchés de détail dans le secteur électrique : un tour d'horizon Ie Partie : les résultats de la concurrence de détail*, Florence School of Regulation Working Paper, 2005

S.J.H. Gijrath: *Interconnection Regulation and Contract Law*, deLex B.V., Amstelveen, 2006

M. Grenfell: *Can Competition supplant Utilities Regulation?* in: Ch. McCrudden (ed.) (ed.): *Regulation and deregulation policy and practice in the utilities and financial services*, Oxford University Press, 1999

J. Luis Guasch, Robert W. Hahn: *Costs and benefits of Regulations, Implications for the developing countries*, Policy Research Working Paper 1773, World Bank, 1999

M. Harker and C. Waddams Price, *Consumers and antitrust in British deregulated energy markets* in: *The Pros and Cons of Antitrust in Deregulated Markets*, Swedish Competition Authority, September 2004

I. Houben, *Public Service Obligations: Moral Counterbalance of Technical Liberalization Legislation?*, European Review of Private Law 1-2008

Ch. Jones: *EU Energy Law, EU Competition Law and Energy Markets, Volume II*, Claeys & Casteels, Leuven, 2007

S. Littlechild, *Competition and Contracts in the Nordic Electricity Markets*, Working Paper CWPE 0550 and EPRG 06, November 2005

R. Loube: *Public Interest Regulation, Common Costs, and Universal Service*, in Miller, W. J. Samuels (ed): *The institutionalist approach to public utilities regulation*, Michigan State University Press, 2002

Juan Rivier: *Training course: Regulation of energy utilities "Tariff design"*, Florence School of Regulation, 2007

E. McRobb and T. Prosser: *Regulating electricity*, in L. Macgregor, T. Prosser, and Ch. Villiers (eds.): *Regulation and markets beyond 2000*; Ashgate, 2000

Ch. McCrudden: *Social Policy and Economic Regulators: Some Issues from the Reform of Utility Regulation*, in: Ch. McCrudden (ed.): *Regulation and deregulation policy and practice in the utilities and financial services*, Oxford University Press, 1999

Hans-W. Micklitz, Jürgen Keßler, *Kundenschutz auf den liberalisierten Märkten – Energie, Vergleich der Konzepte, Maßnahmen und Wirkungen in Europa*, Nomos, Baden-Baden, 2008

M. Minogue: *Governance-based analysis of regulation*, *Annals of Public and Comparative Economics*, 2002, p 649

N. Pongsiri, *Regulation and Public-Private Partnership*, Centre on Regulation and Competition, Working Paper No. 12, October 2001

C. Robinson (ed): *Utility regulation in competitive markets : problems and progress*, Northampton, MA : Edward Elgar, 2007

M. Ross, *Promoting Solidarity: From Public Services to a European Model of Competition?* *Common Market Law Review* 2007, p 1057–80

Union of the Electricity Industry – EURELECTRIC: *Review of European Electricity Prices, Final Report*, 2005

C. Waddams Price, Kh. Pham: *The Impact of Electricity Market Reform on Consumers*, ESRC Centre for Competition Policy, CCP Working Paper 08-7

K. Walsh: *Public services and market mechanisms : competition, contracting and the new public management*, Palgrave Macmillan, 1995

C.M. Wilson and C. Waddams Price: *Do consumers switch to the Best Supplier?*, Centre for competition Policy Working Paper 07-06, April 2007

UK Gas and Electricity Market Office (OFGEM) Documentation

OFGEM *Approval criteria for redress schemes in the energy sector*, March 2008, Ref: 26/08

OFGEM *Vulnerable Customers & Codes Workgroup – Final Report*, June 2006

OFGEM *Duty to Supply Report*, June 2006

OFGEM *Contracts – Report from Duty to Supply, Contracts and Information workgroup*, June 2006

OFGEM *Customer information and other issues – Report from Steering Group*, June 2006

OFGEM: *Supply License Review*, Ref: 217/06, December 2006

OFGEM *Supply License Review - Final Proposals*, Ref: 128/07, June 2007

OFGEM *Review of domestic gas and electricity competition and supply price regulation: Conclusions and final proposals*, February 2002

OFGEM *Gas and Electricity Connections Industry Review 2006-07*, Ref: 215/07, August 2007

OFGEM *Review of the Energy Supply Ombudsman*, Ref: 281/07, November 2007

OFGEM *Complaint handling standards*, Ref: 39/08, April 2008

OFGEM *Ofgem's response to the Super-complaint on billing processes made by the Gas and Electricity Consumer Council("Energywatch")*, Decision, July 2005

OFGEM *Protecting customers: Ofgem's enforcement powers*

OFGEM *A leading voice in Europe*

OFGEM: *Social action strategy*, June 2007

OFGEM: *Sustainable Development Report*, November 2007

OFGEM, OFT: *Understanding the competition law: Application in Energy sector*, 2005

OFGEM *Theft of electricity and gas*, January 2005

Energywatch: *Regulation of marketing to domestic customers: open letter consultation*, January 2008

Energywatch: *Responding to Consumer Needs: Research into the Products and Services Consumers Want from Energywatch* Report, June 2005

Energywatch: Annual Report, 2006/2007

“European Regulators’ Group for Electricity and Gas” (ERGEG) and “Council of European Energy Regulators” (CEER) Publications:

ERGEG: *Customer Protection: Best Practice Proposition*, Ref: E05-CFG-03-06 , July 2006

ERGEG: *Report on Transparency of Energy Prices, Bills and Contracts*, Ref: E05-CFG-02-07 30, September 2005

ERGEG: *Status review on end-user price regulation*, Ref: E07-CPR-08-04, June 2007

ERGEG: *Supplier Switching Process , Best Practice Proposition* , Ref: E05-CFG-03-05, July 2006

ERGEG: *Report on Customer Protection*, Ref: E05-CFG-02-05, September 2005

ERGEG: *Transparency of Prices, Best Practice Proposition*, Ref: E05-CFG-03-04, July 2006

ERGEG: *Report on Customer Switching Process*

ERGEG: *Compatibility of National Legal Conditions Concerning Regulatory Competences*, Ref: E06-REM-08-03, December 2006

ERGEG: *Status review on end-user price Regulation*, Ref: E07-CPR-08-04, June 2007

National Reports to ERGEG:

http://www.energyregulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS

United Kingdom: *Ofgem’ s Submission to the European Commission reporting requirements under Directives 2003/54/EC and 2003/55/EC*, 2006, 2007

The Czech Republic: *The Czech Republic’s National Report on the Electricity and Gas Industries for 2006*, July 2007

France: *Commission de Regulation de’energie: Report to the DG Tren*, July 2007

Slovakia: *National Report 2007, Regulatory Office for Network Industries, Slovak Republic*

Slovakia: *National Report 2006, Regulatory Office for Network Industries, Slovak Republic*

Energy Market Fact Sheets:

http://ec.europa.eu/energy/energy_policy/facts_en.htm

Internal Market Fact Sheet: Slovakia;

Internal Market Fact Sheet Czech Republic

Internal Market Fact Sheet France

Internal Market Fact Sheet UK

Internal Market Fact Sheet Hungary

Internal Market Fact Sheet Poland

Energy Mix Fact Sheet: UK

Energy Mix Fact Sheet: Czech Republic

Energy Mix Fact Sheet: France

Energy Mix Fact Sheet: Slovakia

Energy Mix Fact Sheet: Austria

EU documents (except legislation)

Report from the Commission to the Council and the European Parliament: *Progress in creating the internal gas and electricity market*, [SEC(2008) 460]

Communication from the Commission to the European Parliament and the Council: *Green paper on services of general interest*, COM(2003) 270 final

Communication from the Commission to the European Parliament and the Council: *Towards a European Charter on the Rights of Energy Consumers*, COM(2007)386 final, Brussels, July 2007

Communication from the Commission to the European Parliament and the Council: *An energy policy for Europe* {SEC(2007) 12} COM(2007) 1 final

Communication from the Commission to the European Parliament and the Council: *White Paper on services of general interest*, COM(2004) 374 final

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions;

Accompanying the Communication on “A single market for 21st century Europe”; *Services of general interest, including social services of general interest: a new European commitment*, COM(2007) 725 final, Brussels, 20.11.2007

Commission of the European Union: The EU Electricity & Gas markets: third legislative package September 2007: