



## Competition in Energy Markets and Access to Networks

Five years of Energy Law in Groningen,  
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## Unbundling

- Member States and companies may choose between Total Unbundling (TU), Independent Transmission Operator or Independent System Operator
- It is not a free choice. The choice is the result of a creative mix of optional harmonization, minimal harmonization and total harmonization
- Only total unbundling guarantees non-discriminatory access and willingness to invest in sufficient capacity to serve the market needs

## Unbundling

- In light of the wording of the directive, questions relating to the legal principles of subsidiarity and proportionality arise
- The directive itself creates barriers to the freedom of capital and the freedom of establishment
- An amendment of the directive that clearly prescribes total unbundling as the only acceptable option is needed

## Regulation

- Under the third directive national regulators have to be independent and have been granted with ever more wide ranging powers
- The regulatory system is still nationally oriented and does not guarantee a European level playing field
- A regulatory system which aims at lowest possible transport tariffs does not automatically lead to a proper consideration of all interests

## Regulation

- Commodity trading is subject to scrutiny under regular competition law and therefore regulation influences only a very limited proportion of the total gas bill
- Business model of total unbundled companies is by definition based on non discriminatory 'open access' and willingness to invest under an attractive investment climate
- Regulation of total unbundled companies should become more simple, less detailed and more light handed, ultimately ex post in stead of ex ante supervision is desirable