Treaty Enforcement and Competition
General Considerations

- Enforcement: An important aspect of assisting in the attainment of the EnC objectives, related to the review of proper Treaty implementation

- Enforcement as a corollary of assuming legally binding obligations by the Parties (once the implementation deadlines have expired)

- Enforcement as an approach fitting the particularities of individual cases and situations within the Parties

- Offers the possibility to enter into a dialogue with the Parties
Facets of a Procedure

- The ECS has no decision-making powers, but may bring failure to comply to the attention of the Ministerial Council

- The initiative lies with, inter alia, the ECS, acting either
  - On its own initiative
  - Upon a complaint (Art. 90(1) second sentence)

- Article 90(2) guarantees the Party’s right to be heard

- It is to be noted that the MC in Montenegro envisaged a „formal process at a level below the MC“ in an enlarged EnC
Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.

2. The Party concerned may make observations in response to the request or complaint.

Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations. …
The way ahead

- ECS established an internal Task Force coordinated by Legal

- First task: Establishing a model procedure to be adopted eg by way of Procedural Act

- The need to take action may arise any time
Primary obligation on the Contracting Parties to establish legislation on protection of competition in the energy sector in line with Articles 18 and 19 EnC, including effective enforcement

More scrutiny is needed with regard to both the implementation of the Treaty obligations and the application of national law to individual cases

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