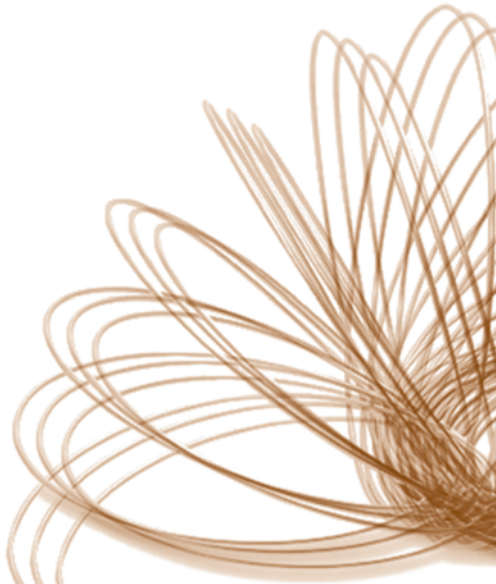
Autorità per l'energia elettrica e il gas

IL CONSUMATORE NEL MERCATO EUROPEO DELL'ENERGIA

Lunedì 21 maggio 2012
Sala Auditorium Via Veneto
Via Veneto, 89 - Roma



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EXECUTIVE SUMMARY

1. Motivazioni del Workshop e background

L'idea del Workshop "Consumer Protection in Europe" è nata dall'esigenza di sviluppare e incrementare il dibattito sull'impatto che le nuove prospettive aperte dalla *behavioral law and economics* avranno sulla protezione del consumatore. Appare urgente, affinché l'intero processo di liberalizzazione non sia rallentato, ripensare i ruoli delle istituzioni pubbliche e private coinvolte nel settore al fine di definire strategie più adeguate a rendere la protezione e l'*empowerment* del consumatore più efficaci, anche in vista dello sviluppo tecnologico in atto nel mercato dell'energia.

La liberalizzazione del mercato dell'energia ha favorito lo sviluppo di nuove prospettive nel dibattito relativo alla tutela dei consumatori. In linea di principio, lo scopo primario dell'introduzione della concorrenza in settori tradizionalmente gestiti in regime di monopolio, è quello di aumentare il benessere dei consumatori finali. Le spinte concorrenziali, infatti, dovrebbero indurre le imprese a massimizzare la propria efficienza e di conseguenza a ridurre i prezzi e migliorare la qualità dei servizi.

La regolazione si è inizialmente posta come obiettivo principale quello di promuovere la concorrenza, intervenendo principalmente sul lato dell'offerta per ridurre il potere di mercato delle imprese dominanti. Il consumatore, in quest'ottica, era concepito come la parte debole dei rapporti contrattuali. Di conseguenza, le misure a sua tutela erano volte principalmente a ridurre la disparità di potere contrattuale e le asimmetrie informative tra consumatore e imprenditore. Obblighi di informazione, trasparenza e di correttezza nelle trattative commerciali erano considerati gli strumenti più efficaci per proteggere i consumatori dagli abusi degli operatori.

Con il passare del tempo è emerso che le misure pro-concorrenziali esclusivamente riferite al lato dell'offerta non erano sufficienti: nonostante il progressivo ingresso di nuove imprese e i *trend* dei prezzi *retail*, gli indicatori dal lato della domanda mostravano che l'impatto della liberalizzazione non era altrettanto forte. I consumatori si mostravano infatti restii a cambiare operatore, non rispondendo alla pluralità delle offerte introdotta dalla liberalizzazione. Questo fenomeno riduceva drasticamente le possibilità per nuovi operatori di incrementare le loro quote di mercato, a vantaggio degli *incumbents.* Ci si è resi conto che la condizione necessaria per intaccare le posizioni dominanti degli ex-monopolisti ed aprire il mercato ad un'effettiva concorrenza era la creazione di consumatori consapevoli ed informati. L'attenzione si è quindi spostata sul lato della domanda: l'in-

tervento pubblico si è posto l'obiettivo di mettere in grado l'utente di sfruttare le opportunità offerte dal mercato concorrenziale scegliendo le offerte più vantaggiose.

Per indurre i consumatori a contribuire al processo di liberalizzazione i regolatori hanno sviluppato una serie di strumenti per informare l'utente ed incentivarlo a una partecipazione attiva nel mercato. Ad esempio, sono stati creati siti internet di informazione, di comparazione di prezzi, sportelli per il consumatore e così via. Oltretutto i regolatori hanno iniziato un processo di dialogo con i vari attori coinvolti nel mercato, di scambio di informazioni con altri regolatori e di condivisione di *best practices* al fine di tutelare il consumatore rendendolo attivo e partecipe nel mercato.

Le teorie di economia comportamentale hanno influenzato lo sviluppo di meccanismi regolatori volti ad incentivare i consumatori ad un comportamento consapevole e reattivo. Questa scuola di pensiero ha, infatti, messo in evidenza l'insufficienza dei tradizionali strumenti di tutela del consumatore basati sul presupposto che l'individuo sia portato a massimizzare la propria utilità e dunque a compiere scelte razionali sfruttando le potenzialità del mercato concorrenziale. Mettendo in risalto gli errori cognitivi nei quali incorre il consumatore quando compie le scelte di mercato, tali teorie hanno favorito lo sviluppo di una regolazione più attenta alla chiarezza e accessibilità delle informazioni fornite agli utenti ed alla semplicità e comparabilità delle offerte tariffarie.

Talvolta l'eccesso di informazione o la complessità contrattuale di alcune offerte commerciali rendono il consumatore incapace di comprendere pienamente l'informazione ricevuta, inducendolo a rimanere inerte o a compiere scelte inconsapevoli. Ecco che il ruolo di controllo del regolatore diventa fondamentale per assicurare un *level playing field* anche dal lato della domanda, in modo che tutti i consumatori siano ugualmente avvantaggiati dalla concorrenza nell'offerta. Un chiaro esempio di tale tendenza è la proposta del regolatore britannico, emersa durante il Workshop, di ridurre il numero e semplificare il format delle tariffe standard offerte, rendendole facilmente comprensibili e comparabili dagli utenti. E' necessario anche tenere conto del fatto che esistono una varietà di categorie di consumatori, alcuni dei quali sembrano richiedere un maggior livello di protezione (i cosiddetti "consumatori vulnerabili"). La centralità del consumatore nei processi di liberalizzazione dei mercati energetici, è stata più volte affermata da parte dei regolatori intervenuti al convegno. In particolare l'intervento dei rappresentati dell'AEEG ha sottolineato come negli anni siano state messe in pratica una serie di iniziative volte a salvaguardare il consumatore dalle possibili dinamiche perverse che l'apertura dei mercati potrebbe ingenerare. Il consumatore finale rappresenta (in Italia ed in Europa – intervento De Suzzoni) il principale destinatario finale dei benefici apportati dal processo di liberalizzazione. Ed infatti AEEG ha introdotto a questo fine una serie di buone pratiche che si concretano in i) monitoraggio dei benefici ai consumatori derivanti dalla completa apertura del mercato, ii) studio e la messa in pratica di possibili strumenti per la protezione dei consumatori vulnerabili o particolarmente bisognosi (esempio: famiglie non abbienti e malati obbligati a terapie intensive) e iii) messa a punto di indicatori per integrare la "tutela dei consumatori" in tutte le decisioni di policy.

In questo contesto, Acquirente Unico svolge, in Italia, una funzione centrale nel campo della tutela dei consumatori di energia e, come recentemente emerso dall'archiviazione della procedura di infrazione (n.2006/2057) avviata nei confronti dell'Italia, è considerato promotore ed operatore di

pratiche innovative e virtuose a livello europeo, in quanto ritenuto un valido strumento per coniugare efficacemente le esigenze di tutela del consumatore con la necessità della promozione di un libero mercato. Nato come organismo pubblico con finalità di tutela del servizio pubblico, ha assunto, con la completa liberalizzazione del mercato, la funzione di aggregatore della domanda. Il compito principale di questo soggetto è, infatti, quello di acquistare energia elettrica nel mercato all'ingrosso a condizioni più favorevoli per poi venderla ai distributori e agli esercenti del mercato di maggior tutela, ovvero il mercato riservato ai piccoli consumatori che scelgono di non acquistare sul mercato libero. Oltre a questo, Acquirente Unico fornisce una serie di servizi ai consumatori. In primo luogo, tramite lo Sportello per il consumatore che gestisce per conto dell'AEEG, dà informazioni agli utenti sul mercato e su come esercitare le proprie prerogative, coadiuvando l'Autorità di regolazione nell'agevolare una pronta risoluzione delle controversie tra utenti e fornitori. Infine, Acquirente Unico ha in corso di realizzazione un Sistema Informativo Integrato, per la gestione dei flussi di informazioni volto ad aumentare la trasparenza e stimolare una più vigorosa concorrenza nel settore, riducendo le barriere all'ingresso, e facilitando il processo di *switching* per gli utenti. Il ruolo di tale soggetto assume dunque rilevanza centrale nell'ambito delle nuove tendenze che animano il dibattito sulla tutela del consumatore, in particolare a livello europeo.

Un'ultima rilevante considerazione riguarda l'evoluzione tecnologica che sta portando all'introduzione di reti "intelligenti" e contatori digitalizzati, che rende ancora più attuale e rilevante il problema della partecipazione attiva del consumatore. Lo sviluppo di questi nuovi strumenti potrebbe portare significativi vantaggi in termini di risparmio energetico. Tuttavia la risposta dei consumatori svolge un ruolo fondamentale affinché queste potenzialità siano attuate. Grazie alla possibilità di un costante monitoraggio dei consumi tramite i contatori intelligenti, le imprese avranno l'opportunità di gestire la fornitura di energia in modo efficiente e di formulare offerte differenziate per orario in base al consumo effettivo. Allo stesso tempo, gli utenti potrebbero di gestire il proprio consumo energetico in modo più consapevole ed efficiente. Tuttavia, per incentivare tale processo, è necessaria una regolazione attenta alle esigenze delle diverse categorie di consumatori, oltre che flessibile e reattiva rispetto ai repentini e inaspettati cambiamenti nella struttura del mercato energetico.

Alla luce di tali premesse, è parso indispensabile promuovere un approccio multidisciplinare ed estendere il dibattito ad un contesto internazionale ed inter-istituzionale. A tale fine, per l'organizzazione del Workshop, ci si è avvalsi della collaborazione dell'International Energy Regulation Network (IERN), da tempo attivo nella promozione dello scambio di informazioni sui modelli di regolazione e le pratiche regolatorie. in uso tra le diverse autorità europee. La visibilità internazionale di questo soggetto, della Florence School of Regulation e dell'Istituto Universitario Europeo (EUI), in combinazione con il ruolo istituzionale di Acquirente Unico, hanno consentito la partecipazione al dibattito di rappresentanti di organismi (istituzioni e imprese) provenienti da numerosi Stati (sei rappresentanti di singoli Stati, oltre ai rappresentanti di quattro associazioni regionali e uno della Commissione europea), nonché di accademici di fama internazionale anch'essi provenienti da diversi Paesi. Si è così creato un contesto ideale per un dibattito fruttuoso, oltre che scientificamente rilevante, dal quale sono emersi risultati particolarmente interessanti.

2. Il Documento Preparatorio: gli obiettivi del Workshop

Il Workshop è stato preceduto dalla redazione e messa in circolazione tra i partecipanti di un "Documento Preparatorio" (riportato di seguito), al fine di evidenziare le principali problematiche teorico-pratiche sulle quali si sarebbe incentrato il dibattito. Tale documento inquadra le linee evolutive del diritto europeo dei consumatori nei mercati liberalizzati (Prima Parte) ed in particolare in quello energetico (Seconda Parte). Esso ha inoltre illustrato alcuni degli strumenti regolatori adottati in conseguenza degli sviluppi teorici, normativi, e tecnologici nel settore energetico (Terza Parte).

Il Documento Preparatorio è stato diviso in tre parti per riflettere i contenuti delle tre Sessioni nelle quali si è articolato il Workshop (v. il "Programma del Workshop", più sotto).

Nella Prima Parte del documento sono state delineate le principali caratteristiche del diritto europeo dei consumatori, con particolare riguardo all'influenza delle teorie dell'economia comportamentale sui suoi più recenti sviluppi. Il diritto europeo del consumatore è stato tradizionalmente improntato ad una tutela di tipo contrattuale: agli imprenditori sono stati imposti una serie di obblighi di informazione volti a rendere il consumatore consapevole e responsabile delle proprie scelte. Recentemente, questo approccio tradizionale è stato messo in discussione dagli sviluppi teorici che fondano le politiche di tutela del consumatore. Gli studi di economia comportamentale hanno messo in luce che il comportamento dei consumatori non segue necessariamente un criterio razionale di massimizzazione dell'utilità. Di conseguenza, la regolazione pubblica dovrebbe tener conto della limitata razionalità degli individui ed intervenire con strumenti flessibili e non eccessivamente intrusivi che inducano i soggetti al comportamento auspicato. Operativamente, la Prima Parte del documento forniva ai partecipanti l'indicazione di focalizzare il dibattito sul rapporto tra *achievements* della *behavioral law and economics* e politiche di regolazione nei mercato liberalizzati, e di sottolinearne le conseguenze più rilevanti per il diritto europeo dei consumatori.

La Seconda Parte del Documento Preparatorio si è incentrata sui profili istituzionali della regolazione dell'energia. Il diritto europeo ha di recente notevolmente ampliato il ruolo e i poteri dei regolatori nella tutela dei consumatori nel settore energetico (in particolare con il cosiddetto "Terzo Pacchetto" di direttive di liberalizzazione del settore energetico[1]). Di conseguenza, è emersa la necessità di un ripensamento delle politiche di intervento di protezione del consumatore energetico. Il diritto europeo sembra continuare ad insistere sui profili della trasparenza contrattuale e sugli obblighi di informazione da parte degli operatori. Ciononostante, l'insufficienza di tali strumenti al fine di rendere il consumatore un attivo partecipante nel mercato è avvertita a livello comunitario. La Commissione europea, i regolatori e le istituzioni pubbliche nazionali, le associazioni dei consumatori e gli operatori del mercato svolgono un costante lavoro di dialogo e di reciproco scambio di informazioni allo scopo di formulare efficaci politiche energetiche a tutela dei consumatori. Istituzioni come il CEER, BEUC, Energy Community sono state create al fine di incrementare questo processo. I regolatori, quelli di alcuni Stati in particolare, prestano una crescente attenzione ai profili di *em-*

1. Direttiva 2009/72/CE del Parlamento europeo e del Consiglio, del 13 luglio 2009, relativa a norme comuni per il mercato interno dell'energia elettrica e che abroga la direttiva 2003/54/CE (GU L 211 del 14.8.2009), pagg.55-89; Direttiva 2009/73/CE del Parlamento europeo e del Consiglio, del 13 luglio 2009 , relativa a norme comuni per il mercato interno del gas naturale e che abroga la direttiva 2003/55/CE (GU L 211 del 14.8.2009), pagg. 94–136

powerment ed "educazione" del consumatore. Nel Documento Preparatorio sono state enumerate e sinteticamente descritte una serie di pratiche regolatorie adottate dalle Autorità di Regolazione Nazionali (ANR) per rendere il consumatore partecipe e attivo nel mercato: strumenti di educazione, strumenti di comparazione di tariffe, gestione dei reclami, risoluzione delle controversie, raccolta di informazioni, strumenti di aggregazione della domanda. La rassegna fornita ha evidenziato come diversi Stati, nell'ambito dei rispettivi contesti sociali, istituzionali ed economici, hanno adottato vari sistemi di protezione ed *empowerment,* distribuendo le competenze tra istituzioni pubbliche, autorità indipendenti e associazioni private.

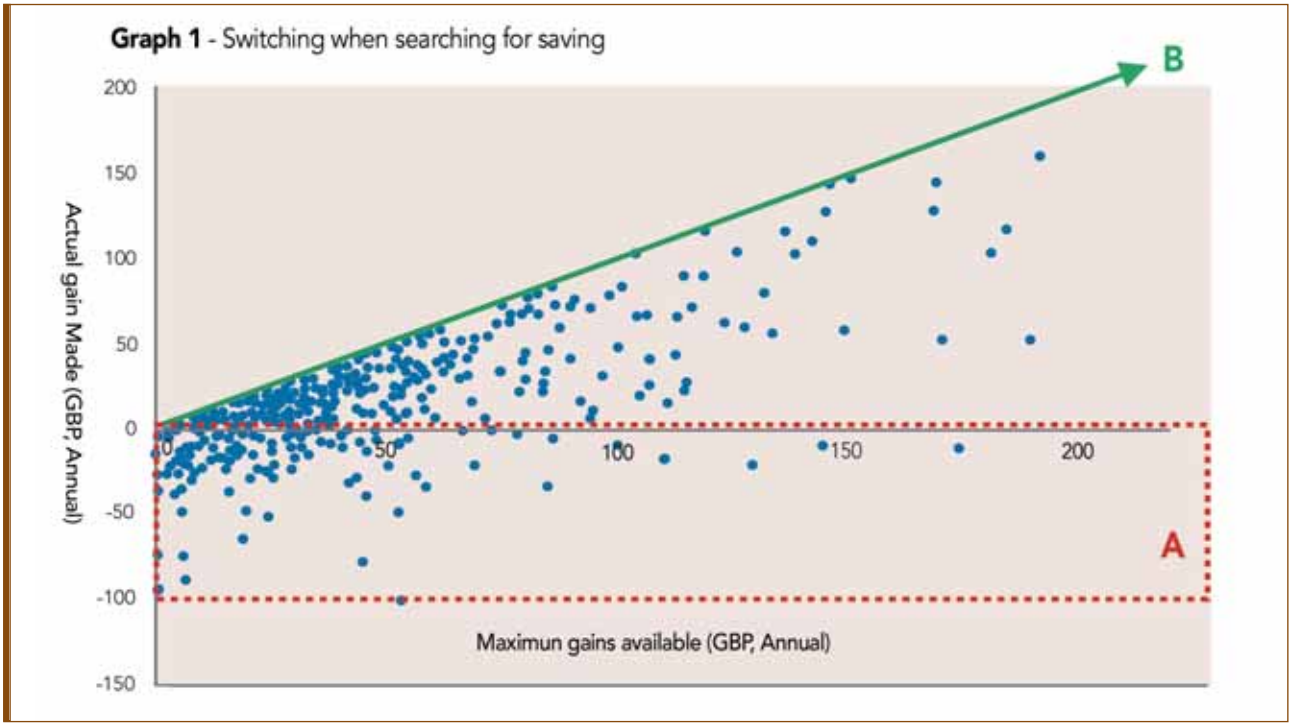
Lo scopo che ci si è posto per la Seconda Sessione è stato quello di confrontare diverse esperienze nazionali e regionali e modelli di regolazione a tutela del consumatore di energia, cercando di far emergere *best practices* e possibili spunti per un futuro sviluppo di tali strumenti.

La Terza ed ultima questione cruciale affrontata dal Documento Preparatorio è stata quella dello sviluppo delle *smart technologies* e delle enormi potenzialità che esse presentato per il rafforzamento del ruolo del consumatore nel mercato energetico, in particolare in quello dell'energia elettrica, ma non solo. L'innovazione tecnologica che sta portando all'adozione di cosiddette reti intelligenti (*smart grids*) e contatori intelligenti (*smart meters*), dovrebbe creare i presupposti per un più agile scambio di informazioni che aumenti la trasparenza del mercato a beneficio degli utenti, ma anche delle imprese, nonché dell'ambiente e quindi dell'intera comunità. Queste nuove tecnologie infatti sono volte a favorire un uso efficiente delle risorse energetiche grazie ad un monitoraggio effettivo e constante dei consumi. Tale controllo in tempo reale dovrebbe consentire agli operatori di differenziare le tariffe in base al livello di consumo ed agli utenti di risparmiare tramite un consumo più consapevole. D'altra parte, l'introduzione nel mercato di questi nuovi meccanismi, richiede un ripensamento degli strumenti tradizionali di regolazione, ponendo particolari criticità riguardo i profili di tutela del consumatore. Vi sono infatti una serie di questioni che gli utenti finali percepiscono come rischiose, principalmente collegate ai costi legati all'introduzione di queste nuove tecnologie, ai rischi di disconnessioni "facili", di accessibilità ad informazioni personali e riservate ed alle possibili discriminazioni tra utenti che queste potrebbero comportare. L'indicazione operativa della terza parte del Documento Preparatorio era quella di far emergere le principali problematiche legate all'introduzione di reti e contatori intelligenti e di evidenziarne gli aspetti maggiormente rilevanti per i regolatori, nel tentativo di sviluppare politiche di regolazione che agevolino l'innovazione nel rispetto dei vari interessi in gioco.

3. I principali risultati emersi dal Workshop

Il Workshop si è svolto seguendo la struttura delineata nel Documento Preparatorio. Nella Prima Sessione i fondamenti teorici dell'economia comportamentale applicata al diritto dei consumatori sono stati discussi dai relatori, tutti accademici provenienti da diversi Stati e specializzati in discipline economiche e giuridiche.

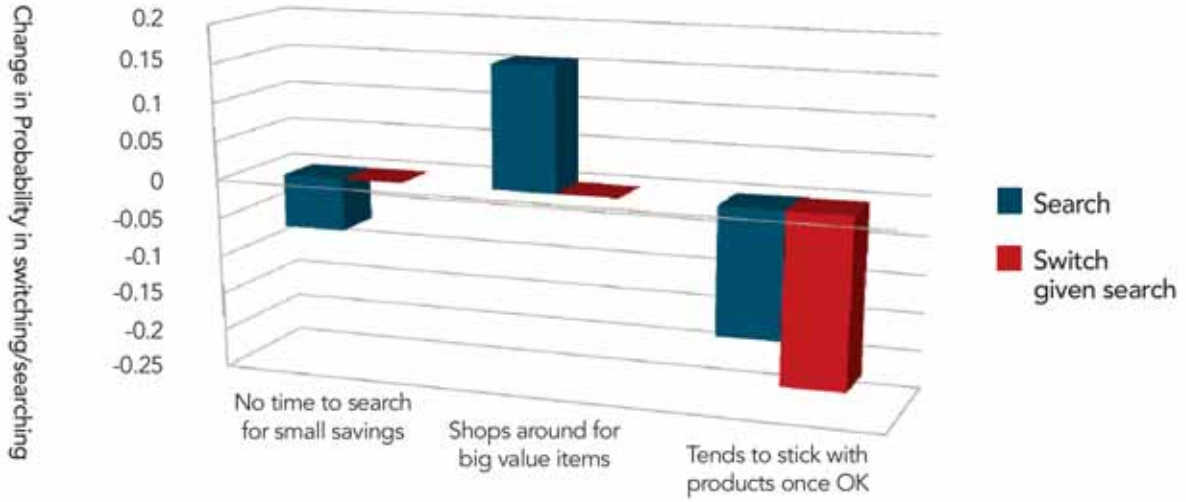
Nel corso della Prima Sessione sono state illustrate una serie di ricerche empiriche svolte negli ultimi decenni attraverso sondaggi, questionari ed interviste sul comportamento dei consumatori nei mercati liberalizzati (C. Waddams). I risultati dell'indagine hanno confermato in gran parte le ipotesi della teoria della razionalità limitata. Infatti i consumatori non sembrano in grado di sfruttare al massimo le potenzialità del mercato concorrenziale; in molti casi arrestano le proprie ricerche appena trovano un'offerta leggermente più vantaggiosa, senza ottenere il massimo guadagno possibile (linea "B" nel Grafico 1) dal passaggio a un nuovo operatore. Ciò che è più allarmante è che circa



un quinto dei consumatori finisce col pagare di più dopo lo *switching* (area rossa "A").

Inoltre, la consapevolezza del proprio consumo appare affetta da pregiudizi, quali ad esempio quello di sovrastimare o sottostimare il proprio consumo rispetto ad un consumo medio. Oltretutto le scelte di *switching* adottate dai consumatori variano grandemente da mercato a mercato, senza coerenza con i costi e i tempi di ricerca rispettivamente impiegati. Infine, l'esperienza positiva maturata da un precedente cambiamento (*nurture*) di operatore sembra incidere in maniera limitata sul grado di *switching*, avendo un maggiore impatto la tipologia (*nature*) di consumatore (tripartita nel Grafico 5 a pag.13).

Graph 5 - Effect of individual consumer on searching and switching behaviors (change in probability of searching/switching).



Nella Prima Sessione sono stati anche affrontati i problemi prettamente economici legati alla tutela dei consumatori nei mercati liberalizzati (A. Nicita), in particolare il *trade-off* esistente tra i benefici di un incremento di disponibilità di informazioni per gli operatori e gli svantaggi che questo può creare per alcune categorie di consumatori. La disponibilità di informazioni per le imprese infatti consente agli operatori di presentare offerte differenziate e di discriminare i consumatori, ma ne aumenta il potere di mercato (grazie al *profiling*), a detrimento della concorrenza. Allo stesso tempo, l'incremento di informazioni a favore dei consumatori ha un esito incerto, essendo le scelte di questi affette da pregiudizi. L'introduzione di nuove tecnologie potrebbe facilitare un'ulteriore evoluzione della protezione/*empowerment* del consumatore. Si è parlato di un possibile sviluppo di cosiddetti "*automatic settings*": tramite la possibilità di monitorare i consumi in tempo reale si potrebbero consentire scelte automatizzate che si adattino ai bisogni rivelati dal comportamento del consumatore. I regolatori, ad esempio, potrebbero imporre agli operatori di proporre offerte più vantaggiose ritagliate sui bisogni effettivi degli utenti e rilevati sulla base delle informazioni ottenute tramite i contatori intelligenti.

Secondo una prospettiva più prettamente giuridico-istituzionale, sono poi state presentate le principali linee evolutive del paradigma regolatorio nella protezione dei consumatori nei mercati liberalizzati (G. Napolitano). È stato evidenziato come, da un approccio focalizzato principalmente sulla promozione della concorrenza e sul controllo delle imprese privatizzate, caratteristico della prima fase di liberalizzazione, si è passati ad uno più incentrato sulla protezione dei consumatori. Non solo ragioni economiche di stimolo della concorrenza dal lato della domanda hanno indotto questo processo; l'importanza dell'aspetto politico della tutela dei consumatori non è da sottovalutare: la finalità di protezione dei consumatori può essere infatti sfruttata dagli attori istituzionali come giustificazione per scelte impopolari, quali la liberalizzazione e la privatizzazione.

È stata poi sottolineata la differenza tra regolazione diretta e strumenti di *empowerment* del consumatore ed evidenziate le difficoltà per le autorità di regolazione di implementare questi ultimi. Questi, infatti, richiedono una serie di attività operative per le quali sembrerebbero più attrez-

zate agenzie o imprese, pubbliche o private che siano. In altre parole, al fine di consentire un intervento più incisivo sulle scelte dei consumatori, ad esempio attraverso l'offerta delle scelte automatizzate di cui sopra, è necessaria una base di dati e di informazioni sui comportamenti dei consumatori molto ricca ed articolata. Questa funzione potrebbe essere svolta meglio da soggetti pubblici o privati (quali, ad esempio, agenzie di aggregazione che offrono il servizio di selezione su delega del cliente) piuttosto che dall'Autorità di regolazione.

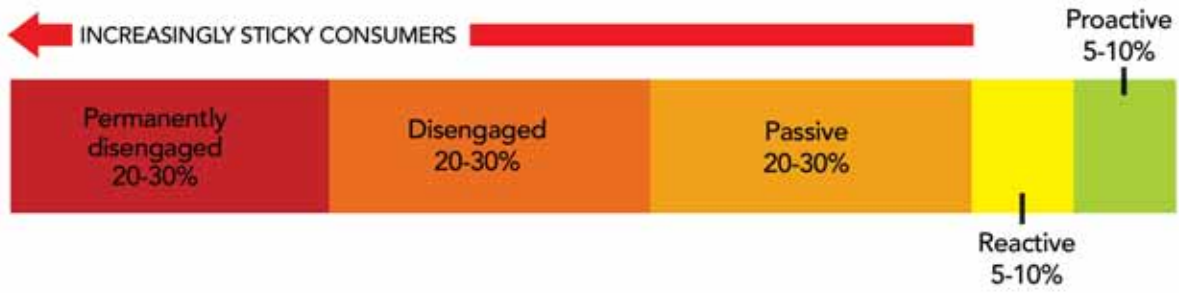
Infine, è stato posto in rilievo il ruolo sociale e di servizio pubblico del settore energetico (H.W. Micklitz). In quest'ambito assume un ruolo cruciale la problematicità della tutela del consumatore "vulnerabile" e del rapporto tra politiche energetiche e diritto dei consumatori. Forti critiche sono state mosse all'assenza di chiarezza nelle definizioni normative e all'insufficiente attenzione verso l'aspetto "sociale" nel diritto europeo dell'energia. E' stata auspicata una maggiore puntualità nelle norme comunitarie, le quali si limitano a distinguere tra categorie di consumatori, medi e vulnerabili, senza definirle. E' stata infine proposta la fissazione da parte del legislatore europeo di standard contrattuali, che tengano in considerazione le evidenze che emergono dalle scienze cognitive, ad esempio la formulazione di clausole contrattuali automatiche e modelli di approvazione chiari e comprensibili e che non inducano il consumatore a scelte inconsapevoli.

La Seconda Sessione del Workshop è stata incentrata sul ruolo dei vari attori istituzionali nella regolazione dell'energia e nella tutela dei consumatori. Esperienze di associazioni di regolatori, di autorità nazionali di regolazione e di associazioni di consumatori "istituzionalizzate" sono state poste a confronto, evidenziandone i diversi ruoli, responsabilità ed approcci.

Le relazioni che hanno aperto la sessione hanno presentato due esperienze di associazioni regionali di regolatori, l'una (il Council of European Energy Regulators, CEER, illustrata da P. de Suzzoni) a livello di Unione Europea e l'altra (Energy Community, illustrata da R. Karova) di Paesi est-europei e della ex-Jugoslavia. Il ruolo di queste associazioni sembrerebbe confermare la tesi, caldeggiata nel Documento Preparatorio, che la funzione dei regolatori pubblici stia andando verso quella di scambio e condivisione di *best practices* nell'obiettivo di introdurre una regolazione più efficace, flessibile e recettiva. Infatti, la prima associazione (CEER) ha presentato un *benchmarking report* sui ruoli e le responsabilità delle autorità di regolazione nazionali nell'*empowerment* dei consumatori. Da tale documento sono emerse una serie di *best practices* che dovrebbero guidare l'attività dei regolatori in questo campo, come ad esempio la promozione di servizi informativi che prevengano il ricorso a reclami formali, canali informativi adeguati con particolare attenzione ai consumatori vulnerabili, cooperazione e dialogo con le associazioni dei consumatori, raccolta di informazioni provenienti dai consumatori, da usare come input per eventuali revisioni regolatorie.

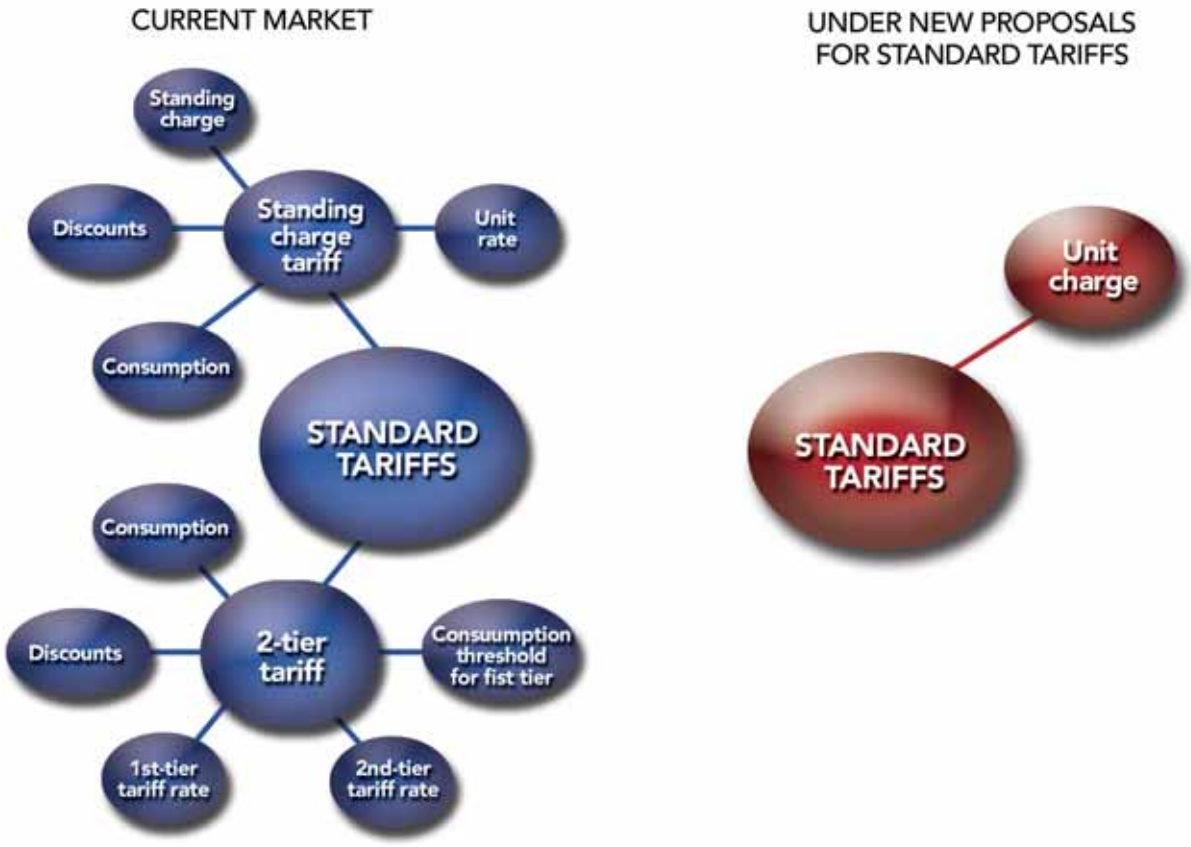
Un'evidente attenzione ai risvolti pratici delle teorie comportamentali ai fini delle politiche regolatorie è emersa dalla presentazione di Ofgem (S. Harrison), il regolatore dell'energia inglese. Premesso che a distanza di oltre un decennio dall'apertura del mercato ai clienti residenziali, il tasso di *switching* dei consumatori è ancora piuttosto basso, essendo la maggior parte degli "sticky consumers" (Grafico a pag. 15), ancora riforniti dall'operatore ex monopolista, il regolatore ha proposto una radicale semplificazione e diminuzione delle offerte tariffarie per renderle comprensibili e comparabili dagli utenti (v. Diagramma a pag. 15).

Graph 6 - Consumer engagement in UK energy markets



• Around 75% of single fuel consumers are still served by the "ex monopolist" supplier

Graph 7 - Comparison of standard existing tariff and new tariff proposal



Più in generale, allo scopo di aumentare la partecipazione attiva dei consumatori nel mercato liberalizzato, Ofgem si pone l'obiettivo di rendere le informazioni il più possibile chiare, semplici e comprensibili per gli utenti. In tale direzione Ofgem svolge inoltre un ruolo importante nella promozione della trasparenza pubblicando regolarmente informazioni per gli utenti, al fine di renderli più consapevoli e reattivi. Infine, è stato proposto un tipo di regolazione più di principio e *output-based*, che imponga standard di condotta per gli operatori tramite modifiche delle condizioni delle licenze di esercizio del servizio, che per questa via diventano obbligatorie e coercibili (*enforceable*) da parte del regolatore.

Anche in relazione al ruolo delle associazioni dei consumatori, l'esposizione dell'esperienza inglese ha costituito un contributo particolarmente interessante (R. Hall). In Gran Bretagna, infatti, Consumer Focus (CF) ha un ruolo istituzionale e rilevanti poteri che sembrano controbilanciare efficacemente il potere delle imprese. Sono stati presentati due casi concreti a dimostrazione del notevole apporto che può dare un'associazione dei consumatori (istituzionalizzata e dotata di poteri effettivi particolarmente penetranti) alla tutela dei consumatori. Nel primo caso, in collaborazione con l'Autorità di regolazione e nel secondo in contrasto con essa, CF è riuscito a porre fine a pratiche abusive da parte di operatori con un elevato potere di mercato e ad ottenere un sostanzioso risarcimento per i consumatori lesi. Tali esempi dimostrano come a volte le tensioni tra organismi istituzionali diversi possano avere effetti positivi e rendere la regolazione flessibile e reattiva.

La Terza ed ultima Sessione del Workshop è stata dedicata alle innovazioni nel diritto dei consumatori e nella regolazione del mercato dell'energia che potrebbero derivare dall'impiego delle "*smart technologies*" (reti e contatori intelligenti). Sono stati esposti i numerosi vantaggi potenzialmente derivanti dall'introduzione di queste nuove tecnologie. Tra questi sono stati evidenziati, in particolare, la maggiore consapevolezza e reattività nel consumo energetico da parte degli utenti; la possibilità per gli operatori di conoscere il comportamento dei consumatori e dunque di presentare offerte basate su dati attendibili; il superamento delle bollette basate sul consumo stimato e la formazione delle bollette basate sul consumo effettivo; la possibilità di evitare disconnessioni e di sostituirle con una riduzione nella fornitura in caso di ritardi o inadempimenti nel pagamento delle bollette.

L'accento è stato posto sugli aspetti problematici dell'introduzione delle *smart grids* per i regolatori (R. Malaman). Lo sviluppo di reti intelligenti richiede una serie di incentivi agli operatori ed una regolazione sia tradizionale o *input-based*, ovvero di tipo tariffario, per incentivare investimenti specifici, soprattutto in aree nelle quali è difficile misurare il livello di *performance*, ma anche *output-based*, cioè impostate sul livello di qualità dell'infrastruttura. Quest'ultima sembrerebbe preferibile per responsabilizzare gli operatori in merito all'efficacia degli investimenti. In Italia, in particolare, una serie di incentivi per investimenti in progetti pilota sono stati approvati dall'Autorità; alcuni di questi progetti sono stati presentati nel convegno.

Sono state illustrate le conseguenze inattese che l'uso di regolazioni *input-based* può portare, evidenziando il caso di un intervento regolatorio del 2011 che aveva limitato ad un massimo del 10% la differenza tra ore di punta nei consumi e ore non di punta nella costruzione della tariffa elet-

trica bi-oraria. Questa decisione era stata adottata in un periodo in cui il costo dell'energia cambiava a seconda dell'orario del 30%. A distanza di meno di un anno tale differenza è scesa al 6%, rendendo il limite eccessivo e impedendo ai consumatori di avvantaggiarsi dei benefici dell'eccesso di capacità da energie rinnovabili.

Questo esempio dimostra l'importanza del ricorso a periodi di prova e di sperimentazione prima dell'introduzione di una misura regolatoria, in ragione delle numerose variabili difficili da prevedere connesse ai costi dell'energia e delle possibili conseguenze inaspettate dall'introduzione di nuove tecnologie. E' stata inoltre affermata la necessità che il regolatore adotti un approccio flessibile in ragione della continua e rapida evoluzione del mercato.

Dal dibattito è emerso che il ruolo centrale del regolatore nel contesto delle *smart technologies* è quello di valutare attentamente i costi e i benefici dell'introduzione delle nuove tecnologie e di stimolare la cosiddetta *demand-response*, ovvero la reattività dei consumatori e lo sfruttamento da parte di essi delle potenzialità dall'utilizzo di contatori digitalizzati. Su tale aspetto si sono concentrate le "*Guidelines of good practice on regulatory aspects of smart metering*" pubblicate e presentate al convegno dalla rappresentante della *retail market task force* del CEER (K. Kavenhag). Le raccomandazioni proposte dal suddetto documento si sono concentrate su quattro aree di azione: tutela dei dati personali e della *privacy*; qualità del servizio ai consumatori, accompagnata da accessibilità, chiarezza e affidabilità delle informazioni sui consumi individuali; analisi costi-benefici derivanti dall'impiego di *smart technologies*; procedure di penetrazione dei contatori intelligenti, le quali dovrebbero essere finalizzate ad evitare discriminazioni tra utenti e promuovere la partecipazione attiva dei consumatori nel mercato.

Sulla necessità di rendere il consumatore finale il principale beneficiario dell'introduzione delle nuove tecnologie, nonché sui rischi di tali strumenti, si è soffermata in particolare l'associazione dei consumatori europea BEUC (M. Stajnarova). In particolare è stato sottolineato il pericolo che consumatori più deboli o meno reattivi siano svantaggiati dall'introduzione di tariffe differenziate per orario. Di conseguenza è stata sottolineata la necessità di adeguate informazioni e campagne di sensibilizzazione per i consumatori.

Anche in questo ambito, le teorie comportamentali svolgono un ruolo importante. Infatti, seguendo la teoria della razionalità limitata del consumatore, a quest'ultimo dovrebbero essere fornite informazioni chiare, semplici, facilmente accessibili oltre che attendibili. Su questo aspetto in particolare si è soffermata la presentazione di Euroelectric (R. Kaljee), che ha inoltre sottolineato la necessità di disegnare il mercato *retail* in modo da renderlo flessibile e comprensibile per i consumatori (*user friendly*) e di ricorrere il più possibile a meccanismi di mercato per proteggere i consumatori, evitando tariffe regolate.

La Commissione europea (M. Sanchez Jimenez) è infine intervenuta illustrando la propria linea di azione in merito al lancio delle *smart grids* in termini di *policy*, di regolazione e di innovazione. In particolare, si è parlato delle varie linee guida pubblicate dalla Commissione sui temi di maggior rilievo, quali *privacy* e dati personali, analisi costi-benefici e funzionalità minime comuni per le reti intelligenti. La Commissione ha evidenziato alcuni punti centrali, quali la promozione di un mercato di distribuzione competitivo nell'interesse dei consumatori, lo sviluppo di nuove tecnologie con

l'obiettivo di tutela dei consumatori tramite maggiore trasparenza e affidabilità delle bollette e maggiore efficienza nell'uso delle risorse energetiche, protezione dei dati personali, una standardizzazione per le reti intelligenti che garantisca un livello minimo di qualità uniforme. La Commissione ha inoltre auspicato una più ampia partecipazione dei consumatori, anche nella fase di sperimentazione delle *smart grids*.

4. Conclusioni e prospettive

Il dibattito ha messo in luce importanti problematiche che in molti casi non trovano soluzioni univoche. Restano infatti aperte una serie di questioni che meritano di essere approfondite ulteriormente. In particolare resta da stabilire quali siano i meccanismi più efficaci di tutela del consumatore nel mercato dell'energia. Sebbene meccanismi di mercato accompagnati da garanzie contrattuali si ritengano insufficienti a proteggere il consumatore dagli abusi e appare palese che le imprese e le utilities operanti sul mercato possano agevolmente ingenerare nel consumatore tipico meccanismi decisionali non ideali (talvolta in maniera opportunistica) è opportuno chiedersi fino a che punto la regolazione debba e possa intervenire.

Alla luce delle considerazioni emerse nel Workshop, appare necessario che la penetrazione delle tecnologie "smart" nei mercati energetici debba avere tra gli obiettivi, quello di rendere il consumatore consapevole, partecipe e attivo quando opera nel mercato dell'energia. Il problema di *come* incentivare tale processo virtuoso, rimane tuttavia aperto. Soprattutto appare ancora da chiarire una definizione univoca di "consumatore medio", e come questa figura si possa rapportare rispetto a quelle di altre tipologie di consumatori (consumatore vulnerabile e "super-consumatore", cioè avveduto e informato). Inoltre è tuttora da chiarire l'applicabilità degli strumenti di *empowerment* per tutelare i consumatori vulnerabili, meno consapevoli e meno reattivi.

Infine rimane aperta la problematica istituzionale di quale organismo debba essere deputato alla tutela dei consumatori. L'obiettivo di favorire l'*empowerment* del consumatore richiede una serie di attività operative di raccolta e scambio di informazioni che si affiancano ai tradizionali strumenti di regolazione. In questo scenario più relatori hanno ipotizzato che alle Autorità di regolazione si potrebbero affiancare organismi (pubblici o privati) specificamente deputati all'esercizio di queste nuove attività, di scambio dati e fornitura di servizi specifici.

Il compito delle Autorità di regolazione e dei legislatori nazionali, tuttavia, rimane fondamentale nel creare le condizioni idonee ad esaltare la consapevolezza che i consumatori hanno del proprio ruolo nel mercato energetico (ed elettrico in particolare).

Il workshop ha contribuito a definire meglio alcune delle questioni chiave che i legislatori ed i decisori (nazionali e comunitari) si trovano attualmente ad affrontare circa il ruolo ed il grado di coinvolgimento che il moderno consumatore di servizi energetici dovrà giocare nello sviluppo dei mercati del futuro. Tali questioni devono anche porsi il problema di come definire in maniera chiara ed univoca il concetto di consumatore vulnerabile destinatario di maggior tutela da parte delle auto-

rità di regolazione. Sembra che la dimensione classica di disagio, legata alla scarsa capienza economica, possa in futuro essere affiancata da una nuova dimensione, legata invece alla limitata attività sul mercato al dettaglio. In tal modo il bacino dei consumatori potenzialmente destinati a trattamenti di particolare attenzione da parte delle istituzioni regolatorie sembra essere destinato ad allargarsi piuttosto che a restringersi.

Tutte queste problematiche hanno dei risvolti pratici di notevole importanza per l'evoluzione e lo sviluppo del mercato energetico e del diritto dei consumatori. Si ritiene pertanto che meritino un'ulteriore discussione e approfondimento.

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Workshop on
Consumer Protection in Europe

Preparatory document by Fabiana Di Porto and Livia Lorenzoni

The following is preparatory for the workshop on "Consumer protection in Europe", organised by IERN (International Energy Regulation Network) and supported by Acquirente Unico.
The workshop is hosted by the Florence School of Regulation, European University Institute – Fiesole.

Session I - The behaviour of consumers in liberalized and non-liberalized markets. An economic and legal perspective

European consumer policy claims for the need of a special protection for consumers, qualified as the weak party of a contractual relationship with a professional counterpart, with respect to whom the consumer is in a position of contractual asymmetry. While reducing contractual disparities European consumer policy is also designed with the aim of creating a single internal market through the harmonisation of Member States' commercial conditions, in order to facilitate cross border transactions. Article 169 of the Treaty of Functioning on the European Union (TFEU) sets the promotion of consumers' interests and a high level of consumer protection as tasks for the Union. According to the same article, the protection of consumers' rights to information, education and association is one of the objectives of European consumer law.

Since its earliest stages, European consumer law has justified an intrusive approach by national public institutions with the need to reduce disparities between the seller of goods or supplier of services, on the one hand, and the consumer, on the other hand. The Directive on unfair terms in consumer contracts of 1993[1], for example, has notably limited the contractual freedom of the parties, promoting a paternalistic approach by Member States' authorities. The traditional approach of European consumer law has been based on the so called "information paradigm"[2], which postulates that well-informed consumers would make rational choices, exploiting the benefits of increased competition. Thus, it has established information requirements for suppliers, in order to safeguard consumers from unfair commercial practices. In these respect, for instance, the Unfair Commercial Prac-

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.
2. H.W. Micklitz; L.A. Reisch and K. Hagen, "An Introduction to the Special Issue on "Behavioural Economics, Consumer Policy, and Consumer Law", Journal of Consumer Policy, 34, 2011, pp. 271–276.

tices Directives[3] punishes misleading information and omissions[4], showing the pivotal role of information disclosure in European consumers' protection[5].

In November 2011, a new Directive on consumer rights has been adopted, merging the four existing directives on consumers contractual rights[6] into a single horizontal directive, in order to simplify, update and harmonise the existing regulatory framework[7]. Information requirements, both before the conclusion and during the performance of a contract, are crucial aspects of the Directive. A large amount of information duties for distance and off-premises contracts, as well as for other contracts, are imposed on traders, confirming that information obligations for suppliers still play a major role in European consumer law and policy.

Against this background, the recent debate on behavioural law and economics has questioned the effectiveness of the traditional regulatory approach to protect consumers, largely based on information disclosure. Consumer law and policy have been substantially shaped by economics theories. Behavioural economics, by focusing on consumers' decision-making processes, is of a great interest for the regulatory evolutions in the field of consumer protection. According to behavioural studies, consumers' choices are less rational and more prone to distortions and biases than theorized by the *"homo oeconomicus"* model postulated by the main stream economic approach.

By challenging the neoclassic economic theories, which were based on the assumption that consumers are rational and self-interest-maximizing actors, the emerging behavioural economic theories have spurred the development of new approaches towards regulation[8]. In particular, the idea that information disclosure would be the most effective regulatory device for consumer protection postulates that people are able and willing to make the most convenient choice by considering, analysing, understanding and interpreting correctly the information provided. Psychological and empirical studies have proved that, in the real world, often consumers are biased and their choices are irrational and influenced by a number of factors.

In particular, people's choices are often influenced by *heuristics*[9], including their previous beliefs and knowledge, as well as by irrational expectations. As a consequence, people may not maximise their utility and exploit the benefit of a wider range of choices. Conversely, they often show *status quo* biases, loss aversion and inertia. These phenomena can be a consequence of several factors, such as high search costs, people limited capacity to assess information, as well as their misperception of their own future demand[10].

3. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.
4. Article 7, Directive 2005/29/EC.
5. See G. Howells; H-W. Micklitz; T. Wilhelmsson "Towards a better understanding of unfair commercial practices", International Journal of Law and Management, Vol. 51 No. 2, 2009, pp. 69-90.
6. Directive 85/577/EEC on contracts negotiated away from business premises, Directive 93/13/EEC on unfair terms in consumer contracts, Directive 97/7/EC on distance contracts, Directive 1999/44/EC on consumer sales and guarantees.
7. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 64–88.
8. See R. H. Thaler and C. R. Sunstein "Nudge: Improving Decisions about Health, Wealth, and Happiness" New York: Penguin, 2009; Various authors "Special Issue on Behavioural Economics, Consumer Policy, and Consumer Law", Journal of Consumer Policy (2011) 34; OECD, Consumer policy toolkit, available at www.oecd.org/sti/consumer-policy/toolkit (2010).
9. See N. Rangone "Il contributo delle scienze cognitive alla qualità delle regole", forthcoming in Mercato, concorrenza, regole, 1/2012.
10. For a taxonomy of the different deviations from rationality, see Office of Fair Trading, S. Huck; J. Zhou and C. Duke "Consumer behavioural biases in competition, a survey", Final Report, May 2011.

From a regulatory point of view, these findings are relevant in that they highlight the importance of framing the information provided, of educating consumers and of designing default rules. Behavioural law and economics have pointed out that individuals' decisions significantly depend on how the different options are presented; people who are overloaded by a large amount of complex information, for example, are unlikely to engage in searching and switching. They may rely on different factors, such as the "rule of thumb" (only considering the products they are shown) or the "reference point" (stop searching when they find an offer that is slightly cheaper than their current one)[11].

These findings have triggered an animated debate on consumer law and policy. In the US, a leading book by Richard Thaler and Cass Sunstein has stressed the importance of behavioural insights in policy-making processes. From the authors' standpoint, in order to influence people's behaviour, regulators need to consider not only the rational but also the instinctive aspects of individuals' decision-making process. The regulatory strategy envisaged by Thaler and Sunstein is labelled by the authors as *Nudge*, which in very simplified terms means inducing people towards desirable behaviour, without compelling them to do so. This study recommends the use of non-intrusive measures for regulating human activities. They suggest that public institutions should follow the line of a "libertarian paternalism", which leaves the regulated individuals free to decide, but involves regulatory instruments, such as – but not limited to – default rules, which should guide them towards welfare-maximising choices.

On the other side of the Atlantic, within the debate on better regulation, the notion of Reflexive Government has been elaborated[12]. This concept can take various forms[13]; however, in all its models, the fundamental characteristic of this type of regulation is the learning process which should drive the regulators towards better policy choices. This learning process is based on information exchanges, consultation and participation of stakeholders in the regulatory decision-making process.

Some European regulators have, in the past years, shown an increasing interest towards behavioural economics in order to understand consumers' attitudes and to develop effective regulatory approaches. In the UK, the Office of Fair Trading has published a survey on the impact of consumer behavioural biases on competition law and policy[14]. Along the same line, the Office of the Gas and Electricity Markets (Ofgem) has published a study on behavioural biases in the field of energy retail markets[15].

The European Commission has also emphasised the need for a "behavioural economics perspective" in the regulation of retail investment services[16]. It also hosted two international conferences on behavioural economics in order to spread the understanding of this discipline among European

11. OFGEM "What can behavioural economics say about GB energy consumers?" 21 march 2011 available at: http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents1/Behavioural_Economics_GBenergy.pdf.
12. For an account of the innovations in regulatory policies as a consequence of behavioural economics developments, see F. Di Porto "Information challenges for the post-liberalized Italian energy retail markets: how regulation and competition rules shape information flows" Fourth Annual Conference on Competition and Regulation in Network Industries, Brussels, 25 November 2011.
13. Five models of reflexive governance have been elaborated: the neo-institutional approach, the collaborative–relational approach, the experimentalist approach, the pragmatist approach and the genetic approach. See Various Authors "Reflexive Governance: Redefining the Public Interest in a Pluralist World" Edited by Olivier De Schutter and Jaques Lenoble, Hart Publishing, 2010.
14. OFT, S. Huck; J. Zhou and C. Duke, cited above.
15. OFGEM "What can behavioural economics say about GB energy consumers?", cited, see footnote 11.
16. European Commission 2010 "Consumer decision-making in retail investment services: a behavioural economics perspective" November 2010, available at: http://ec.europa.eu/consumers/strategy /docs/final report en.pdf.

policy makers[17]. In addition, Article 22 of Directive 2011/83 on consumer rights contains a provision that, according to the Commission, is inspired by behavioural literature[18]. The Article, in fact, is aimed at limiting the use of default options through which traders impose extra payments to consumers (i.e. in addition to those agreed upon by the consumer as return to the trader's main obligation). The norm compels traders to obtain express consent by the consumer when requiring extra-payments, failing to do so would result in reimbursement. In the Commission's view this provision takes into account the limits of consumers' ability and willingness to assess information and the risks of "signing-without reading-problem"[19].

Finally, European institutions have developed various initiatives for consumers' education and empowerment. For example, the European Consumer Centres Network (EEC-Net) was founded in order to advice and help consumers from different Member States to exercise their rights and to settle complaints. Other projects, such as the Dolceta portal[20] or the Training for consumer empowerment (TRACE) programme[21], have been established with the aim of raising consumers' awareness and provide them information. The Dolceta portal is aimed at enabling consumers to easily access information regarding their rights under European and national consumer law, while TRACE consists in a series of interactive training courses, which have been designed to support and enhance the role of consumer organisations' representatives in the decision-making process through training.

Despite these efforts, however, a recent survey of the Eurobarometer[22], has shown that a high percentage of consumers still perceive European consumer law and policy as ineffective in protecting and informing them. These findings call for a rethinking of policy strategies in order to develop more effective regulatory strategies in the area of consumer protection.

There are a number of alternative regulatory tools which might be adopted to improve the regulatory outcome following a behaviourally-informed approach. The pivotal question then becomes "how" behavioural economics could actually do so. As noted above, at European level information disclosure duties for traders remain the main tool to protect consumers (top-down paternalistic approach). Behavioural economics does not contend that this may be the appropriate strategy. In some circumstances, however, to cope with consumers' irrationality or "bounded" rationality a greater deal of attention should be placed on the quality of the information provided, rather than on its quantity. As stressed by the debate around nudge, simplification and greater sophistication in the framing of information by regulators should help reduce the cognitive errors of consumers, leading them to welfare-maximising choices.

Besides information disclosure, information sharing obligations have assumed an increasingly important role in the field of consumer protection, especially in post-liberalised sectors[23]. As consumers start playing an active role in the market, information flows need to be accurately regulated in order to foster

17. Ciriolo, E. "Behavioural economics in the European Commission: past, present and future", 2011, available at http://www.oxera.com/cmsDocuments/Agenda_January%2011/Emanuele.pdf.
18. http://ec.europa.eu/consumers/behavioural_economics/index_en.htm.
19. M.G. Faure & H.A. Luth "Behavioural Economics in Unfair Contract Terms Cautions and Considerations", Journal of Consumer Policy, 34: 2011, pp. 337–358.
20. http://www.dolceta.eu/
21. http://www.trace-beuc.org/
22. European Commission "Consumer Empowerment Special eurobarometer 342", Brussels, April 2011.
23. F. Di Porto "Information challenges for the post-liberalized Italian energy retail markets", cit.

the consumers' position in the new economic environment. In this respect, the aim of information duties shifts from a mere contractual guarantee towards an education and empowerment tool for consumers, which should enhance transparency and participation of the latter in the regulatory process.

Session I of the Conference is aimed at assessing the implications of behavioural economics studies for European consumer law and policy. The purpose of this session is to foster the debate around behavioural law and economics in order to highlight the main lessons the EU and national regulators can draw from these findings so as to encourage the development of more efficient and effective regulatory approaches in the field of consumer law and policy.

Session II - Regulatory authorities, best practices and powers in the protection of energy consumers (*)

The policy implications of behavioural economics are particularly relevant in relation to consumers protection in recently liberalised markets. With the emergence of competitive markets in previously monopolistic sectors, consumers face new opportunities, as well as new challenges. On the one hand, they should benefit from the wider range of choices deriving from increased competition; on the other hand, they are required to actively engage in complex decisions, which were previously undertaken by public institutions[24]. In energy sectors, in particular, the technical aspects and the complex structure of the markets increase the level of information asymmetries both among market operators and between them and final consumers[25]. As mentioned above, the traditional opinion that transparency and information duties in European consumer law would reduce contractual disparities and information asymmetries between traders and consumers, thus leading to better market outcomes, has been challenged by behavioural economics insights. Session II will be devoted to understand the impact of these recent findings (if any) and how these developments influence consumer protection practice in the energy sector.

European energy policy is largely based on the assumption that competition law and consumer policy are complementary and that reducing information asymmetries is crucial to promote the liberalisation process and (as a consequence) to protect consumers. Consumer law is intimately related to competition law. Generally speaking, their common objective is the well functioning of the market, the former intervening on the supply side and the latter on the demand side. In the classical approach to consumer regulation, the main link between competition law and consumer protection is to be found in the concept of "consumer sovereignty": both these disciplines are intended to ensure an effective consumer choice through legislative and regulatory measures aimed at correcting market failures[26]. Some authors contend this view by arguing that competition law would only ben-

(*) The present session reviews national regulatory practices aimed at protecting energy consumers. The survey is not intended to be an exhaustive assessment of the regulatory tools available to NRAs. In particular, some ex post regulatory tools (a part from ADR) as well as price regulation are not included in the present document but could still form an object of discussion during the session.

24. OECD "Consumer policy toolkit", 2010, cit.
25. See F. Di Porto "Information challenges for the post-liberalized Italian energy retail markets", cit.
26. N.W. Averitt and R.H. Lande "Consumer sovereignity: a unified theory of antitrust and consumer protection law" in Antitrust law journal, 65 (1996-1997) p. 713-757.

efit rational, well-informed consumers, who are able to act as self-*entrepreneurs* (i.e. to assess and efficiently exploit the opportunities and risks deriving from their choices)[27]. Behavioral law and economics, moreover, have shown how widening the range of choices for consumers does not necessarily imply that they will be able to freely and consciously exercise their choice[28].

The Third Energy Package[29] greatly emphasizes the use of transparency requirements for protecting customers. Following the trend underlined in Session I, the rationale for information requirements in the energy sector has been shifting from a paternalistic view (i.e. a tool to protect weak contractual counterparts) towards a more mature one, where information obligations are seen as educating and empowering devices to raise consumers' awareness and to make them proactive. European energy policy is based on the principle that providing consumers with easy and accessible information on consumption data and associated prices and services costs would increase their switching rates, allowing them to benefit from competition.

However, a recent study of the European Commission has revealed that European electricity consumers do not exploit the potential benefits of competition, showing a very low switching rate[30].The Commission has stressed the need for greater transparency and comparability of offers in order to empower consumers. To accomplish this purpose, it has established the Citizens' Energy Forum, an institutional platform for information sharing and exchange of best practices among European and Member States' institutions, with the goal of implementing competitive, energy efficient and fair retail markets for consumers[31]. By establishing the Citizens' Energy Forum the Commission also shows its intent of involving interested parties and stakeholders in the formulation of energy consumer policies.

The role of "monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations"[32] in the energy sector has been assigned by EU law to national regulatory authorities (NRAs). Therefore, a variety of practices can be observed in the different national institutional contexts. However, it is possible to identify some common tools that specifically address information sharing and consumers' education and empowerment that have become a major concern for regulatory authorities in almost all Member States.

Education tools

According to a recent survey of the Council of European Energy Regulators (CEER), in the vast majority of Member States, NRAs are responsible for customer empowerment, information and protection in the energy sector. In some countries (Austria, Belgium, Germany, Italy, Portugal, Lithuania, Spain, Sweden, Netherlands) regulatory authorities play a "leading role" in the consumers' information activities, while in others (e.g. France, Greece, Czech Republic, Finland, Hungary, Ireland) only a subsidiary one. The majority of NRAs cooperate with other public bodies, organizations, industry

27. F. Denozza "Tutela della concorrenza e tutela dei consumatori: Due fini confliggenti?" in Mercato concorrenza regole, 2/2009, p. 393.
28. A. Nicita "Tutela della concorrenza e tutela dei consumatori: Due fini confliggenti?" in Mercato concorrenza regole, 2/2009, p. 400.
29. Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55); Directive 2009/73/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).
30. IP/10/1507 Brussels, 15 November 2010 "EU consumers not making full use of the savings opportunities of energy market liberalization".
31. http://ec.europa.eu/energy/gas_electricity/forum_citizen_energy_en.htm.
32. Article 37 i), Directive 2009/72/EC; Article 41 i), Directive 2009/73/EC.

companies, and consumer representatives by means of advice, consultation process, information exchanges, working groups, technical and financial support[33]. The results of the fourth meeting of the Citizens' Energy Forum, show that customers are generally informed on their rights, on how to switch supplier, how to submit a complaint, and, less often, on how to save energy, by means of web-sites, leaflets, hotlines (in 15 countries there is one run by the NRA), but also by information campaigns at the local level.

Price comparison tools

The Forum has stressed that "effective and comprehensive price comparison tools are of key importance in the active participation of customers in the energy market and specifically in their decision to change energy suppliers."[34] By applying the insights of behavioral economics to consumer protection in the energy sector, some countries have developed institutionalized forms of information sharing so as to empower consumers to easily access and compare the different available options and to guide them towards the most convenient choice. Different models have been employed, depending on the different institutional, economic and social contexts of each Member State. In some countries, public institutions (NRAs, Ombudsman and so on) directly provide consumers with price comparison services. In Italy, for example, the NRA (Aeeg) directly runs and finances a price comparison service, the "TrovaOfferte" (offer-finder) which consists in a web application, which displays a list of offers available to a given consumer, on the basis of the characteristics and preferences that emerge from some indicators provided by the user[35]. A similar service exists in France, the "Energie-Info", which includes the service "Comparateur offres"[36]. In both the Italian and French models, suppliers register their data on a voluntary basis and the NRA (in France, the national energy Ombudsman) monitors the process. In Portugal, information on commercial offers and price comparison tools are provided both by the NRA and the non-governmental Portuguese Consumer Association (DECO). By contrast to the Italian and French model, Portuguese national legislation compels suppliers to provide the NRA with their commercial proposals and sets minimum requirements for price comparison services.

Other Member States have chosen a more market-based model, in which price comparison services are operated by private companies which collect information by market operators. In Germany, for instance, private companies, independent from energy companies, energy suppliers and network operators, run private price comparison websites which display and rate available offers. A positive aspect of this mechanism is that the companies "compete with each other for the best service, the best price data, the most user-friendly website and the best deals accessible."[37] Moreover, consumer organizations award the company which provides the most complete and accurate data, making the quality of the service visible. In the Netherlands a similar model has been

33. CEER "Benchmarking Report on the roles and responsibilities of NRAs in customer empowerment and protection as of 1st January 2011" Ref: C11-CEM-46-03 11 October 2011.
34. Conclusions of the 4th meeting of the Citizens' Energy Forum Retail Forum, London, 26-27 October 2011.
35. http://trovaofferte.autorita.energia.it/trovaofferte/TKStart.do.
36. http://comparateur-offres.energie-info.fr/comparateur-offres-electricite-gaz-naturel/criteria.action?profil=particulier.
37. CEER "Price Comparison Tools: case studies Annex 1 to CEER Draft advice on Price Comparison Tools" Ref: C11-CEM-45-05a 11-Oct-2011, at p. 33.

adopted; the Dutch national regulatory authority, however, has stressed the drawbacks of private price comparison websites, especially with regard to the difficulty of ensuring their independence from energy companies, while maintaining a sufficient control on the information provided.[38] BEUC, in response to the CEER public consultation, has stressed the importance of regulatory oversight of privately run price comparison tools to ensure the independence and the accuracy and impartiality of the information offered.

A peculiar system is that of the United Kingdom, where "Consumer Watchdogs'' have been established in all regulated sectors in order to "keep a balance between competition and consumer protection"[39]. In the UK system, Consumer Focus (the statutory consumer body), rather than the NRA (Ofgem), is in charge of comparing commercial offers in the energy sector[40]. Consumer Focus provides a voluntary Code of Practice with an accreditation scheme, "The Confidence Code", which covers independent internet price comparison services, setting out the minimum requirements that they must meet in order to be, and remain, accredited[41]. Moreover, Consumer Focus webpage contains itself an Energy Price Comparison Tool[42], as well as links to the accredited online price comparison services operating in the market as to facilitate consumers' switching.

Complaint handling

With regard to complaint handling, the Third Energy Package requires Member States to "ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements."[43] In the majority of Member States, NRAs are in charge of complaint handling, in some cases in cooperation with other bodies. In France, for example, the responsibility for customer complaints on gas and electricity, is shared among the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF, Ministry of Economy), the CORDiS ("Comité de règlement des différends et des sanctions"), established within the NRA (Commission de Régulation de l'Energie, CRE) and the energy ombudsman (Médiateur National de l'Energie, MNE). NRAs carry out a number of tasks in complaint handling and dispute resolution, such as imposing a solution on the parties, or trying to speed up the resolution of the dispute. In some countries (such as Italy, Greece and Slovak Republic) NRAs have powers to issue binding decisions. In many cases, NRAs are supported by a single point of contact service, as required by EU legislation[44], with the role of providing consumers with useful information prior to the complaint, so as to empower them to correctly exercise their rights[45].

38. http://www.nma.nl/en/documents_and_publications/press_releases/news/2011/11_32_nma___energy_consumers_can_safely_use_price_comparison_websites_when_switching_energy_providers.aspx.
39. L.A. Reisch and H-W. Micklitz "Consumers and deregulation of the electricity market in Germany", Journal of Consumer Policy, 29 (2006), p. 399–415.
40. http://www.ofgem.gov.uk/Consumers/Pages/Consumer.aspx.
41. http://www.consumerfocus.org.uk/files/2010/12/New-Confidence-Code.pdf.
42. http://energyapps.consumerfocus.org.uk/price/.
43. Article 3.13 of Directive 2009/72/EC and Art. 3.9 of Directive 2009/73/EC.
44. Article 3.12 of Directive 2009/72/EC; Article 3.9 of Directive 2009/73/EC.
45. CEER "Benchmarking Report on the roles and responsibilities of NRAs in customer empowerment and protection as of 1st January 2011" Ref: C11-CEM-46-03 11 October 2011.

Ex-post guarantees and dispute settlement tools

The Third Energy package stresses the importance of speedy, accessible and effective ex-post remedies for consumers against suppliers' abuses. In the words of the European Commission "in order to build confidence among consumers and promote their active participation to the internal energy market, it is vital that their concerns and complaints are dealt with in a transparent, effective and non-discriminatory manner."[46] To this end, European law compels Member States to ensure that electricity suppliers provide consumers with information "concerning their rights as regards the means of dispute settlement available to them in the event of a dispute". In addition, European law promotes the development of out-of-court dispute settlement procedures so as to enable consumers to resolve their disputes with suppliers, when an agreement cannot be reached within complaint handling. These mechanisms should give consumers the possibility to be restored of eventual losses before going to court, thus enhancing their confidence in the market and reducing the scope for direct price regulation.

With regard to out-of-court dispute settlement, Member States entrusted different bodies with consumer redress duties: the NRA, the Ombudsman (either sector-specific or horizontal), a complaint board, or the consumer protection authority. In 2010, the European Commission has set up a working group on Alternative Dispute Resolution (ADR) in the energy sector in order to identify best practices[47]. From this study it emerges that the main characteristics of good ADR mechanisms in the energy sector are: credibility (which may be enhanced by official approval by public institutions), independence, transparency, information and awareness, accessibility, inexpensiveness, clearness, speediness, consistency, competence, fairness and effectiveness. In a number of Member States (e.g. Austria, Ireland and Portugal) independent NRAs (or a complaint board closely linked to it) are directly responsible for ADR. In other countries, such as Belgium, France, Greece, the Netherlands, Sweden and the United Kingdom, independent Ombudsmen or complaint boards are in charge of the main functions concerning ADR. In Italy, the national regulator (AEEG) is in charge of guaranteeing an efficient treatment of ADR procedures between the customer and the energy supplier or DSO; consumers may also address independent bodies on certain aspects of mediation in civil and commercial matters. According to the Commission working paper, ADR mechanisms should be independent and not simply have autonomy within a particular company; company mediators or customer Ombudsmen may nevertheless contribute to the consumers' protection[48].

Data gathering

Behavioral economics studies have shown that relying on the concept of "the average consumer" may not be sufficient to design effective instrument for policy making. Thus data gathering should be complemented by behavioral data[49]. In order to carry out their tasks NRAs need to be informed

46. European Commission Staff Working Paper "An Energy Policy For Consumers" Brussels, 11.11.2010 SEC(2010) 1407 final p. 12.
47. European Commission Working Group Report on Alternative Dispute Resolution in the Energy Sector, Report prepared for the 4th Citizens' Energy Forum – October 2011.
48. Conclusions of the 4th meeting of the Citizens' Energy Forum Retail Forum London, 26-27 October 2011 point 6
Article 3 Directive 2009/72/EC
49. Third European Consumers Summit Consumers and Markets Workshop: "What data do policy makers and stakeholders need"? April 11 -12 2011 European Management Center, Brussels, available at:
http://ec.europa.eu/consumers/events/ecs_2011/Output/key_learning_summit_workshop_1.pdf.

about consumers' attitudes such as their awareness of the market, of their rights and their satisfaction on quality and transparency. NRAs, therefore, collect data from consumers through a number of sources (surveys, complaints, public consultations)[50]. They also collect information on complaints from energy companies in order to assess customers' empowerment and the correct functioning of the market[51]. Some countries, such as Italy, the Netherlands and Spain, are developing "integrated information systems" in order to centrally manage information flows and create a unitary platform of information sharing, which should enhance transparency, promote switching, to the benefit both of consumers and operators.

All the above-mentioned models pursue the common goal of establishing information tools to educate consumers and empower them to shop around and choose the most convenient option. Those models should be designed taking into account behavioral economics insights on the quality, the accessibility and the educational function of information.

Demand aggregation tools

In addition to the above mentioned empowerment mechanisms, persisting contractual disparities between consumers and providers may call for further actions so as to ensure a fair-priced universal service, particularly to household consumers and small enterprises. Given their weak contractual position on the market, European Law has envisaged the possibility for Member States to introduce or maintain measures aimed at protecting these consumers in post-liberalised energy markets[52]. Even though the European Court of Justice has recently limited the scope for State intervention to proportionate, limited in time, strictly necessary, clearly defined, transparent and non-discriminatory measures, which pursue the general economic interest[53], public and universal service obligations remain fundamental for European energy law and policy[54]. As a consequence, Member States face the difficult challenge of balancing the promotion of competitive markets with a high level of protection of final consumers, ensuring that households and small enterprises enjoy "public service guarantees" and "reasonable tariffs"[55].

One of the tools to reduce the contractual asymmetries affecting consumers, while preserving the competitive process, is represented by demand-side aggregation schemes. Some Member States directly incentivise the adoption of such schemes (e.g. through fiscal bonuses for energy consortia, etc.); others simply rely on private initiative, coupled with education and empowerment measures and with NRAs' prices' oversight; thirdly, demand aggregation can be publicly mandated and managed on behalf of small (household and business) and/or vulnerable consumers, with an aim to protect them (this is the case for the Italian Acquirente Unico).

50. CEER "Benchmarking Report cit.
51. Point 4 of Conclusions of the 4th meeting of the Citizens' Energy Forum Retail Forum London, 26-27 October 2011.
52. Article 3 Directive 2009/72/EC.
53. Judgment of the Court (Grand Chamber) 20 April 2010 in Case C 265/08, Reference for a preliminary ruling under Article 234 EC from the Tribunale amministrativo regionale per la Lombardia (Italy), made by decision of 15 April 2008, received at the Court on 19 June 2008, in the proceedings Federutility, et.al v Autorità per l'energia elettrica e il gas,
54. Commission of the European Communities "Communication from the Commission Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)" COM(2006) 851 final {SEC(2006) 1724} Brussels, 10.1.2007
55. Point 42 of Directive 2009/72/EC.

Demand aggregation schemes, be they managed or incentivized by the state, or else left to the entrepreneurship of final consumers, help re-balancing their contractual position vis-à-vis energy retailers, thus implementing tools "to make sure that all consumers, especially vulnerable ones, *are able to benefit from competition* and fair prices", as indicated in the Third Energy Package[56]. By aggregating energy demand, these instruments have the advantage of empowering and fostering the consumers' position without directly intervening on prices. Furthermore, by participating in power exchange they help contrasting the market power of vertically integrated companies, thus contributing to transparently form the reference price.

Session II is aimed at discussing the different institutional options for consumer empowerment and education, underlying pros and cons of the different models in reaching the goal. The discussion will also consider how these options would be suitable for different economic and institutional environments in different Member States.

Session III – Future trends in consumer protection. Smart consumer protection in a smart grid context

The widely discussed introduction of innovative technologies in the energy system, namely smart grids and smart meters, has stirred an intense debate on the impact of these instruments on consumers.

Smart grids have been defined as "networks that can cost-efficiently integrate the behaviour and actions of all users connected to it – generators, consumers and those that do both – in order to ensure economically efficient, sustainable power system with low losses and high levels of quality and security of supply and safety."[57] Even though smart grids may be implemented without smart metering systems, in order to fully exploit smart grids' potential benefits, the introduction of intelligent meters is deemed necessary[58]. A smart meter is "in the first place a digital meter, which allows for feedback functions on energy consumption, automation and remote control and different pricing."[59] The development of these devices should enable consumers to directly access and control their consumption data and the quality of the supply. The Third Energy Package has required Member States (or NRAs) to recommend that electricity and gas undertakings optimise the use of electricity or gas, "for example by (…) introducing intelligent metering systems or smart grids, where appropriate."[60] Furthermore, the electricity directive compels Member States to implement intelligent metering systems, subject to an economic assessment of all the long-term costs and benefits, with the purpose of promoting and assisting the active participation of consumers in the electricity supply market[61].

56. Point 50 of Directive 2009/72/EC, emphasis added.
57. EU Commission Task Force for Smart Grids, Expert Group 1: "Functionalities of smart grids and smart meters" Final Deliverable, available at http://ec.europa.eu/energy/gas_electricity/smartgrids/doc/expert_group1.pdf.
58. ERGEG "Position Paper on Smart Grids. ERGEG Conclusions Paper on Smart Grids Annex 3: Evaluation of Responses" Ref: E10-EQS-38-05 10 June at 11.
59. BEUC and ANEC "Smart energy systems for empowered consumers", Joint ANEC/BEUC position, BEUC Ref.: X/044/2010 ANEC Ref.: ANEC-PT-2010-AHSMG-005final.
60. Article 3, para. 8, Directive 2009/73/EC and Article 3, para. 11 Directive 2009/72/EC, emphasis added.
61. Annex I, point 2, Directive 2009/72/EC.

Benefits for consumers deriving from the penetration of smart technologies

Smart metering systems are favoured by European institutions for several reasons. First, smart energy systems are expected to deliver a number of economic and environmental benefits. The introduction of smart grids should encourage an increased use of renewable energy sources, thanks to the integration of renewable energy and electric vehicles into the grid. Smart grids and meters should, furthermore, increase energy savings through a controlled consumption by end-users. In addition, they could contribute to improve market efficiency, through the employment of time differentiated (dynamic), as opposed to flat (static) pricing. Even security may be enhanced through improved and targeted management of the grids, and real time feedbacks on grid conditions[62].

Moreover, smart grids and meters are considered potential drivers for great advantages for final consumers. According to the European Regulators' Group for Electricity and Gas (ERGEG), a "user-centric approach"[63] is a fundamental driver for smart grids. The employment of these innovative technologies is in fact aimed at allowing consumers to play an active role in optimising the operation of the system[64]. Smart meters should provide consumers with detailed information on their consumption, enabling them to be aware of their individual consumption patterns and of the time-varying cost of energy. This should empower consumers to control their energy bills, encouraging a more efficient use of energy, especially if smart meters are coupled with time-differentiated pricing. The effect of this change would be a consistent abatement of electricity costs by reducing peak demand[65]. The availability of a larger amount of information could also facilitate supplier switching and participation of consumers in the energy market. Moreover, participation may include the possibility for consumers to become themselves producers, by feeding-in the energy they generate when available[66]. Finally, the "two-way digital communication between supplier and consumer"[67] is aimed at allowing consumers' feedback to be integrated in the energy providers and the regulators' strategies.

Concerns for consumers' protection

Consumers associations have pointed out a number of end-users concerns which may hinder the consumers' acceptance and employment of smart meters. Leaving aside the issues of privacy and data protection, which are outside the scope of today's debate, one of the main issues stressed, is related to the protection of "vulnerable customers". This concept, in the context of smart technologies, refers to categories of consumers who are unable or unwilling (risk-adverse customers) to modify their consumption habits.

They could be disadvantaged by the introduction of smart meters and of time-differentiated pric-

62. See G. Heffner "Smart Grid - Smart Customer Policy Needs". An IEA paper submitted to the Energy Efficiency Working Party Workshop report, OECD/IEA April 2011 and European Commission Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Smart Grids: from innovation to deployment" {SEC(2011) 463 final} Brussels, 12.4.2011.
63. ERGEG "Position Paper on Smart Grids" An ERGEG Public Consultation Paper" Ref: E09-EQS-30-04 10 December 2009.
64. European Technology Platform for Electricity Networks of the Future (SmartGrids ETP) FAQ available at http://www.smartgrids.eu/web/node/56#12.
65. "Around the world, pilot projects in smart metering show that time-differentiated pricing reduces peak demand by an average of 15%." G. Heffner "Smart Grid - Smart Customer Policy Needs", cit..
66. ERGEG "Position Paper on Smart Grids" 2009, cit..
67. European Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Smart Grids: from innovation to deployment" {SEC(2011) 463 final} Brussels, 12.4.2011 at 2.

ing in many different ways[68]. End-users could be affected by increased prices, which may derive from smart grid investment costs. The risk of disconnections could also be higher. Smart grids, in fact, allow remote and instantaneous disconnection for non-paying customers, replacing the existing system which requires costly and time-consuming manual disconnections[69].

New challenges for regulators

In the light of behavioral economics theories regulators need to take into account the limited rationality of consumers, as well as the social and cultural factors which may influence human behaviours. In order to develop effective consumer feedback policies, merely providing information and price signals to consumers may not suffice; according to behavioural economics studies, regulators should identify sophisticated strategies for encouraging behavioural changes[70]. According to EURELECTRIC, for example, in order to ensure consumers' engagement in smart systems, "easy, simple and automated services should be offered"[71].

As a consequence, regulators and policy makers face the great challenge of developing new policies in order to encourage the responsiveness of consumers to "new 'smart' energy consumption patterns"[72]. A crucial aspect of the implementation of smart grids, which need to be incentivised by regulators and energy providers, is, indeed, consumer participation. Demand-side participation encompasses the concepts of demand-side management and demand response[73]. The former refers to the traditional measures employed by utility on the demand side to increase the efficiency of the energy system. The latter involves a bottom-up approach, where "customers become active in managing their consumption in order to achieve efficiency gains and thus reap monetary/economic benefits"[74]. Smart grids technologies are aimed at developing such demand side response schemes by creating feedback mechanisms and information exchange between utilities and consumers, as stressed in the fourth energy forum[75]. In order to enable a take-off of demand response, CEER initially recommended creating offers that reflect actual consumption patterns, to build up interfaces with the home, and to set a national hub/database for metering data collection, that is made accessible to stakeholders[76]. With regard to the latter, many participants to CEER's public consultation[77] disagreed on the feasibility of mandating the establishment of national points of contact, considering that DSOs could easily run this task. However, this model carries the risk of discriminations and abuses by national DSOs, which could strategically slow down the process of issuing metering data, thus hindering switching. Against this model, some countries (e.g. the UK and Italy) have created an independent point of contact. In Italy, a very recent Law-Decree has given the above mentioned In-

68. BEUC and ANEC "Smart energy systems for empowered consumers", cit., at 7.
69. G. Heffner "Smart Grid - Smart Customer Policy Needs", cit., at 10.
70. Ibid at 15
71. EURELECTRIC "Views on Demand-Side Participation: Involving Customers, Improving Markets, Enhancing Network Operation" Dépôt légal: D/2011/12.105/35 August 2011.
72. European Commission Communication on "Smart Grids: from innovation to deployment", cit., at 10.
73. EURELECTRIC "Views on Demand-Side Participation", cit.
74. Ibid at 10.
75. Conclusions of the 4th meeting of the Citizens' Energy Forum Retail Forum London, 26 -27 October 2011.
76. CEER "Draft Advice on the take-off of a demand response electricity market with smart meters". A CEER Public Consultation Paper Ref: C11-RMF-31-03 04-May-2011.
77. http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CUSTOMERS/PC-62%20CEER%20Draft%20advice%20on%20the%20take-off%20of%20a%20demand%20response/R.

tegrated Information System (run by the Acquirente Unico under delegation of the regulator AEEG)[78] the responsibility to collect information on consumption, leading to the creation of a national point of contact independent from DSOs.

What role for the industry and consumer associations?

Suppliers and distribution system operators (DSOs) have a crucial role to play in order to exploit the smart grids potentiality concerning bi-directional communication between suppliers and consumers. To this end, EURELECTRIC suggests the use of simple customer interfaces, with the supplier remaining the major point of contact for consumers. Suppliers are, in fact, responsible for incentivising consumers' behavioural changes through the design of attractive services and pricing, while DSOs play the role of "neutral market facilitators to ensure high-quality, robust and efficient retail market processes by providing information to market actors in a transparent and non-discriminatory manner."[79]

The debate on how to encourage consumers' responsiveness to smart systems calls for an increase of consumers' awareness and education. The European Consumers' Organisation (BUEC) and the European Consumer Voice in Standardisation (ANEC) share the opinion that "it is crucial to communicate towards consumers so as to ensure they understand the ongoing changes and feel part of the development". After a public consultation with national regulators and stakeholders, the ERGEG issued guidelines on good practices on regulatory aspects of smart metering for electricity and gas, recommending a number of actions in order to educate and empower consumers, such as ensuring that information on consumption and costs is available to consumers easily and free of charge[80]. The European Commission has recommended information and awareness-raising actions by national regulators in its proposal for a directive on energy efficiency[81]. Educating consumers through accessible communication of the costs and benefits of smart systems and dynamic pricing systems, coupled with precautions to protect consumers and reassure them on the risks of smart systems, appears to be a necessary "transition strategy" as to guide (or "nudge") consumers towards "smarter" behaviours[82].

Session III is aimed at fostering the debate on the impacts of smart energy systems on consumer protection policies. It discusses new regulatory challenges and priorities which emerge from the introduction of smart technologies in the field of consumer protection. Different regulatory practices in selected cases will be explored in order to build a common understanding of the current approaches and to discuss new strategies.

Workshop Speakers (bionotes): Jean-Michel Glachant - Catherine Waddams – Giulio Napolitano – Antonio Nicita – Hans Wolfgang Micklitz – Fabiana Di Porto – Patricia de Suzzoni – Rozeta Karova –Sarah Harrison - Richard Hall –Alessandro Ortis – Roberto Malaman – Karen Kavanagh – Monika Stajnarova – Roel Kaljee – Carlo Bozzoli – Manuel Sanchez Jimenez
IERN Team: Alessandro Rubino – Francesca VantaggiatoInternational Energy Network Regulation – Acquirente Unico

78. Article 22 of Law-Decree no. 1 of 24 January 2012 on "Competition, liberalisation and infrastructures".
79. EURELECTRIC "Views on Demand-Side Participation" cit.
80. ERGEG "Final Guidelines of Good Practice on Regulatory Aspects of Smart Metering for Electricity and Gas" Ref: E10-RMF-29-05 8 February 2011.
81. European Commission "Proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC {SEC(2011) 779 final} {SEC(2011) 780 final} COM(2011) 370 final 2011/0172 (COD) Brussels, 22.6.2011.
82. G. Heffner "Smart Grid - Smart Customer Policy Needs", cit. at 15.

INTERNATIONAL ENERGY REGULATION NETWORK – ACQUIRENTE UNICO

Workshop on

Consumer Protection in Europe

Sala Refettorio, Badia Fiesolana
Via dei Roccettini 9,
San Domenico di Fiesole (FI) - Italy

Florence, 16 February 2012

PROGRAMME

Workshop Opening

Welcome address — Stefano Bartolini, *European University Institute*
Paolo Vigevano, *Acquirente Unico*
Background and Objectives — Luigi Carbone, *AEEG*

Session I – The behaviour of consumers in liberalized and non-liberalized markets. An economic and legal perspective

Chair and session introduction Jean-Michel Glachant - *European University Institute*

- Consumers Choice and rationality Catherine Waddams - University of East Anglia

Role and functions of regulators: a legal and economicperspective

- Giulio Napolitano – *Università degli studi di Roma TRE*
- Antonio Nicita – *Università degli studi di Siena*

European approach to unified consumer protection practices

- Hans-Wolfgang Micklitz – *European University Institute*

General discussion

Session II – Regulatory authorities, best practices and powers in the protection of energy consumers

Chair and session introduction Fabiana Di Porto - *Università del Salento*

Role of Regulatory Associations and Regional initiatives in European energy markets

- Patricia de Suzzoni - *Council of European Energy Regulators*
- Rozeta Karova – *Energy Community*

Role of regulators on customer protection. Diversity of approaches in Europe:

NRAs adopt a variety of approaches on several aspects of consumer protection (Complaint handling, switching procedures, billing and price information) and on customer empowerment. It will be useful and interesting to compare and contrast some the existing approaches and interesting case studies in Europe.

- Sara Harrison - *Ofgem*
- Marielle Liikanen – *Swedish Energy Market Inspectorate*

Role of Consumer Associations

- Richard Hall - *Consumer Focus*

General discussion

Session III – Future trends in consumer protection. Smart consumer protection in a smart grid context

In the development of competitive energy markets, a greater role should be played by active consumers, who are bound to become the focus of the EU energy policy (Conclusion of the Citizens Energy Forum, London 26-27 October 2011). In order to achieve this outcome, a radical technological and regulatory evolution should be envisaged in the coming years.
In this session we will explore how NRAs are coping with the needs for new legislation to facilitate the use and penetration of smart technologies (smart grids and smart meters).
In order to reap the benefits of smart grids a number of factors need to be taken into consideration. We will then explore how costs and benefits for consumers can be accounted for, conditions for effective behavioural change to occur and the technological and behavioural challenges related to domestic demand response
Finally we will analyse practical experience in developing smart metering functionalities in selected cases in the final part of this session.

Chair and introduction Alessandro Ortis – *Medreg*

Regulatory aspects of smart technology

- Roberto Malaman – *AEEG*
- Karen Kavanagh - *Council of European Energy Regulators*

Implementation and development of smart technologies: challenges and opportunities.

- Monika Stajnarova - *BEUC*
- Roel Kaljee – *Eurelectric*

Role of Industry: how industry can/should facilitate the creation of a smart consumer.
Case studies and pilot projects

- Carlo Bozzoli – *ENEL*
- Manuel Sanchez Jimenez – *DG ENER*

Meeting closure - Wrap up discussion and general considerations

- Jean-Michel Glachant - *European University Institute*

Highlights from the workshop **"Consumer protection in Europe"**

Document prepared by Fabiana Di Porto and Livia Lorenzoni

Introduction

Consumer's active participation in energy markets is one of the pillars upon which the liberalization process has been built. European law and policies- have increasingly focused on consumers' engagement and empowerment as tools to foster competition. The classical approach to consumer protection has evolved, as a consequence of the developments occurred in the underlying theoretical foundations. In particular, the economic assumptions on which regulatory strategies in the energy sector were based have been shifting towards a more behaviorally-informed approach.

Behavioral economics and cognitive studies have triggered the debate on how to shape public intervention as to influence consumers' choices. The dramatic innovations in the approach to consumer protection in the liberalization process require a continuous reconsideration of the powers and functions of the national regulatory authorities (NRAs). Under the impulse of European law, national regulators have increasing duties in relation to consumer protection. Member States, given their different institutional and cultural environment, have developed various institutional mechanisms. Looking at NRAs' role in a long-term perspective, these challenges seem to involve an even more radical change that requires NRAs to ensure, among other things, the effective penetration of smart technologies into modern energy markets.

The discussion of the workshop focused along these main issues and has been organized in three sessions. We report below the main contribution from each session.

Session I - The behavior of consumers in liberalized and non-liberalized markets. An economic and legal perspective

(Chair: Prof. Jean-Michel Glachant – Florence School of Regulation)

According to the Chairman the relevant question in relation to consumer protection is why we should protect consumers. To answer this question, several approaches were illustrated. The legacy approach (Harvard and Cambridge '20-'50s), which maintained that public institutions need to protect consumers from themselves. Consumers were considered unable to take rational choices, to think in the long run. Conversely, States were conceived to be rationally superior to consumers in many fields, and, considering their possibility to exert coercion, they were thought to have the right (and the ability) to protect consumer better and in a more efficient way from their own mistakes. A different view, within the "old school" approach, postulated that consumers do not need to be protected from themselves; they rather need protection from companies. Companies' contractual power and economic weight would, in fact, give them considerable leeway to take advantage of consumers' weaknesses.

Twenty years later behavioral economics has elaborated the concept of "bounded rationality": individuals are deemed to be rational only to a certain extent. Empirical evidence has confirmed that individuals have difficulties in foreseeing every future circumstance that might materialize, to collect and process information. This concept was redefined through the notion of "switching costs". According to the Chairman switching costs can be reduced (or socialized) through social networks via imitation and shared efforts. This indubitably means that consumers have different ability (and interest) in switching. As a consequence, companies might target consumers based on their bounded rationality, and might take advantage of their limited ability in processing complex information. This has a number of powerful applications and consequences for consumer protection issues and for the related regulatory policies.

The first session of the conference was then introduced by the Chairman, who illustrated its general goals: providing an overview of this issue in a comprehensive way and contributing to foster the debate among the participants.

Catherine Waddams (University of East Anglia): "Consumer choice and rationality"

Empirical studies on consumers' behavior in liberalized markets have highlighted some of the factors that might influence their choice and rationality. Prof. Waddams has collected evidence from a number of surveys over the past decade, in order to explore consumers' search and switching behavior. Typically, the questions addressed by the surveys intended to explore the rationale for switching behaviors and consumers' self-perception. Some of the issues raised in the surveys concerned the level of consumers' gains after switching; consumers' awareness of their own consumption; their rationality across markets, with respect to their beliefs about benefits and search/switching costs; and finally the reasons behind their switching behavior.

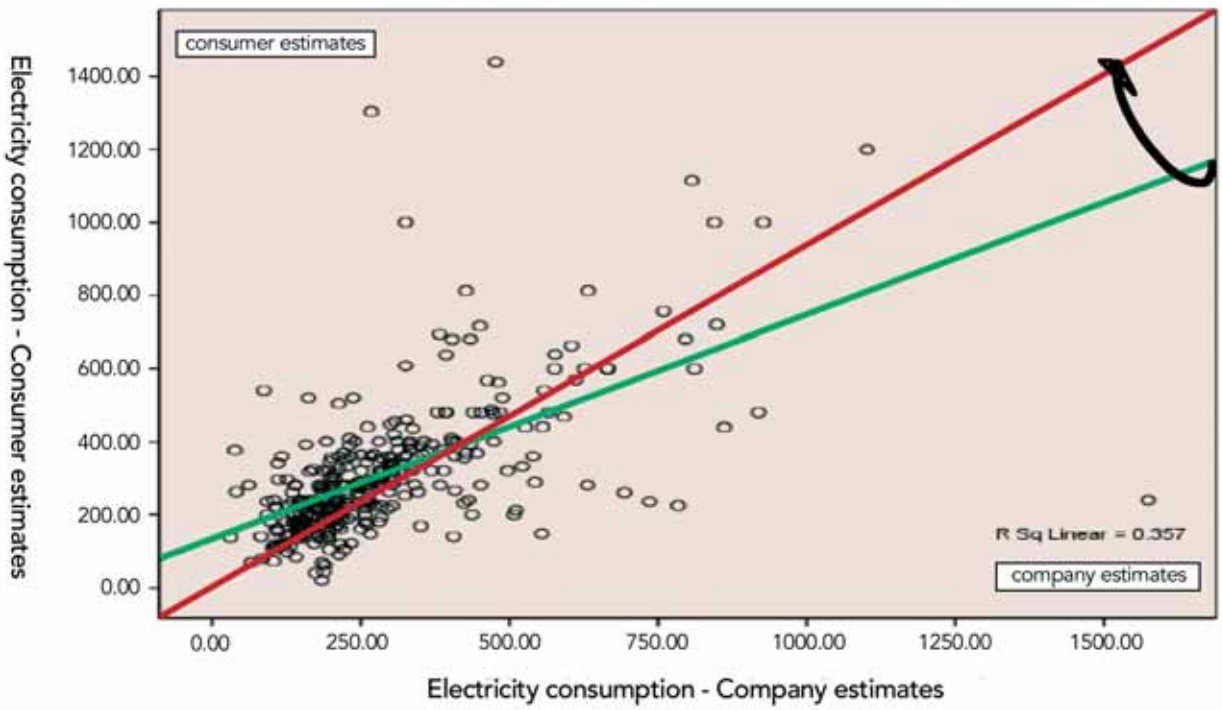
With regard to the first issue (i.e. consumers' savings after switching), evidence collected has shown that many consumers had positive gains (i.e. they saved money), but most did not fully exploit their

saving opportunities. Half of the consumers who switched to a cheaper tariff gained less than the maximum available; less than one fifth chose the cheapest option. These data were deemed consistent with the assumption of individual bounded rationality: searching is costly, and consumers' searching activity often stops short of the maximum level of saving possible (line "B" on the graph 1, below), for any given circumstance. More worrying results emerged from the analysis: in fact, the data collected have shown that at least one fifth of the switchers ended up paying more after switching (consumers in area "A" in the graph below). Furthermore, no evidence emerged of learning over time: the results obtained from the 2005 survey did not show any improvement compared with the one carried out in 2000. These findings ware considered consistent with the assumption of consumers' confusion or overload. In other words, consumer's rationality can process a ceratin volume up to a level of information; once this level is reached the average consumer is unable to process additional information. A question which remained open was whether this was typical of the electricity market or not.

Graph 1 - Switching when searching for saving

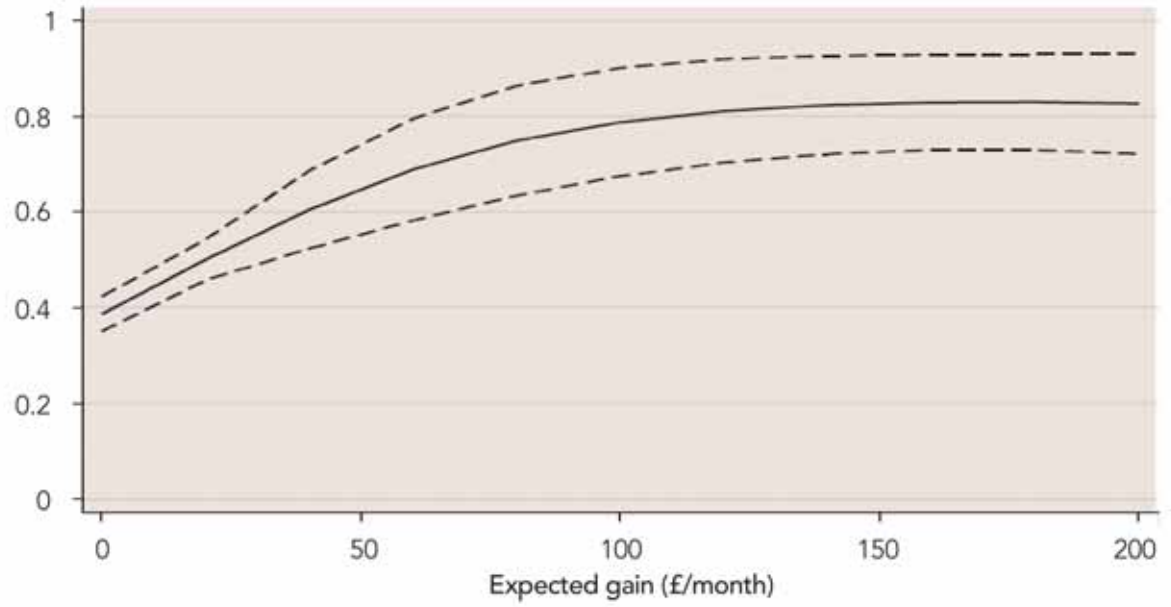
A second class of questions analysed regarded self-perception. Overall, consumers appeared to have an informed idea of their levels of consumption, but they were typically affected by biases (graph 2 below). They tended to revert towards the average: consumers that showed lesser consumption than the average tended to consider their consumption higher than what it actually was; the same was true for consumers on the other side of the average line.

Graph 2 - Mean reversion toward average



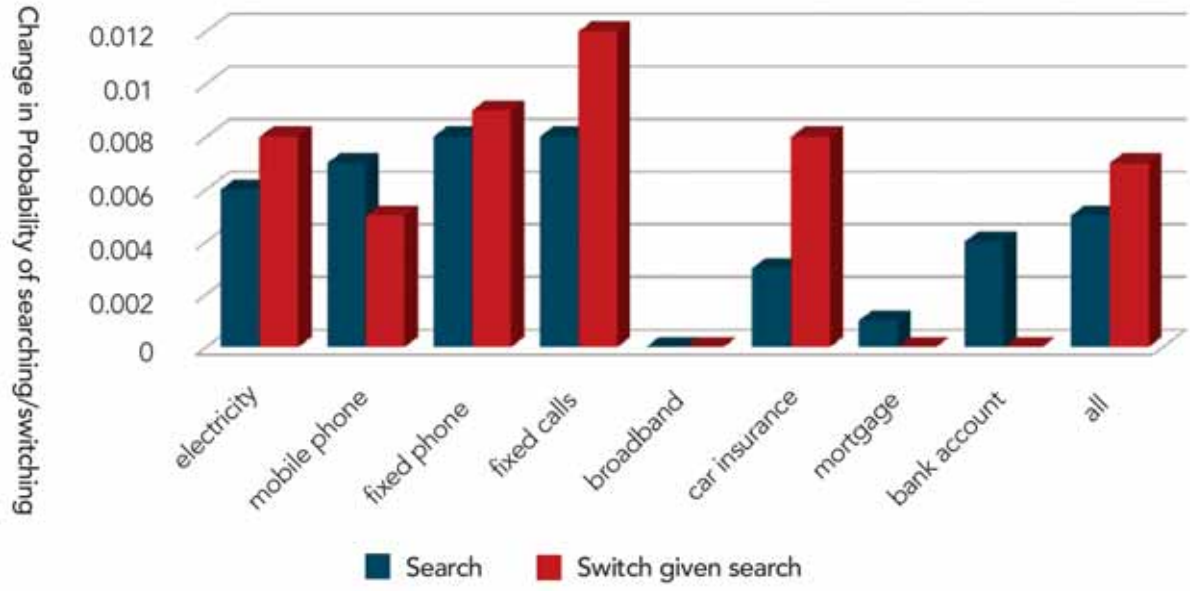
The third issue (i.e. consumers' behavior across markets) was dealt by analyzing consumers' beliefs about potential gains and time to search/switch across eight different markets. The results of the survey highlighted that, as a group, those who expected to gain more tended to switch more (group rationality) (graph 3).

Graph 3 - Expected gains and switching behaviors (group rationality)



However, expected time to search and switch had little impact on the overall results. The analysis of the effect that an extra pound saved (monthly) had on different markets (8 different markets were analyzed including electricity, electronic communications and financial services) showed that perhaps consumer should reallocate efforts between markets. The same 1£/month saved generated a lot more search (and switching) in some markets than in others. These results allowed the reader to consider that higher efficiency gains could be achieved by better distributing searching time across sectors, again confirming some degree of bounded rationality - or irrationality - in the selection process (graph 4).

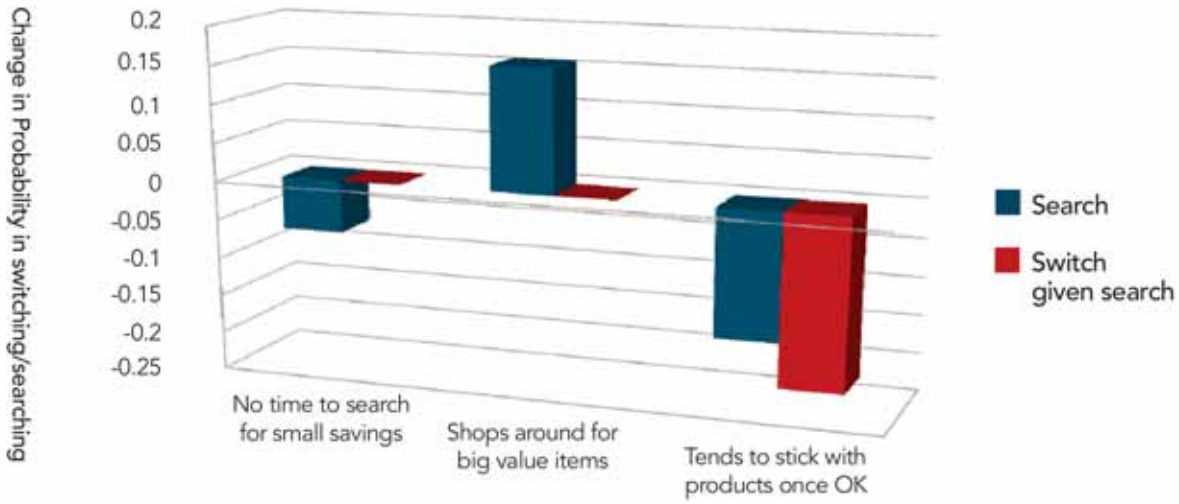
Graph 4 - Effect of a 1£ of monthly saving in searching and switching (change in probability) across markets



The final question addressed by the surveys was whether the switching activity depended on the consumers' "nature" or their "nurture", meaning in this context the experience gained in the past. It emerged that the biggest single determinant on switching behavior was the previous experience (positive) of switching in other markets (representing 20% on average). When including the "type"[1] of consumer in the analysis, the "experience effect" became less significant, and, apart from those cases when previous experience could account for individuals' behavior, nature was more important in explaining their behavior than nurture: those who tended to shop around for big item values tended to search more than switch (graph 5).

1. A "searching type" of individual would be an individual defining himself as interested in searching other and better opportunities in the market considered or in other markets.

Graph 5 - Effect of individual consumer on searching and switching behaviors (change in probability of searching/switching).



As a general conclusion the analysis has shown that consumers' engagement increased the level of savings and that searching (and switching) behaviors were greatly affected by individual attitude rather than by past experience. This however did not rule out the possibility that consumers made mistakes. In addition, the typical consumer was biased toward the average consumption observed in the population (mean reversion) when it came to estimates of own expenditures; and finally it appeared that consumers failed to allocate optimally their searching time among different markets.

Giulio Napolitano (University of Roma Tre): "Role and functions of regulators. Legal and economic perspective"

The presentation focused on how the regulatory framework has evolved with regard to energy consumers' protection, taking into consideration the fact that studies on consumers' behavior may largely benefit the design of regulatory policy in the energy sector. Using a legal perspective, Prof. Napolitano has underlined how the National Regulatory Authorities (NRAs) powers and organization have been shaped by the evolution in the European approach to consumer protection. While, at the beginning of the liberalization process, the NRAs policy mainly focused on the promotion of competition and on the control of the behavior of the newly privatized entities; with the beginning of the new century, consumer protection started to play a central role. European Directives and Regulations have stated that one of the main tasks for national regulators was to protect consumers (see for example Article 3 of the Third Energy Package).

Both economic and political reasons explained such a shift in the regulatory paradigm. Concerning the economic reasons, authorities started to realise that promoting competition on the supply side was not sufficient and that the pressure of demand side is key to promote effective competition; consequently, the position of consumers needed to be strengthened. The political aspect was also

particularly relevant. It appeared that policy makers might have used consumer protection as a tool to justify unpopular policies such as liberalisation and privatisation of public utilities. Given that the liberalisation process might cause losses in the short term, while its benefits become evident in the medium and long run, public bodies needed to shift their attention towards consumer protection also to make their choices more attractive to voters.

A further institutional issue addressed regarded who should be made responsible for consumer protection. Competition between EU and Member States (MS) in advocating consumer protection prerogatives influenced the design of the legal framework. Questions addressed regarded who should enforce consumer law, who should be in charge of resolving disputes in this field, whether the sector-specific regulator or the competition authority. Parliaments and Governments have retained powers over two fundamental issues: the definition of public and universal service obligations and the supplier of last resort on the one side, and the definition and protection of vulnerable consumers, on the other. Conversely, they have delegated to regulatory authorities powers concerning not only quality and price regulation, but also consumers' protection and empowerment. The speaker explored why these responsibilities were delegated to NRAs and formulated some hypothesis, such as the need for technical sector-specific expertise; the need for constant monitoring; as well as the interest of shifting the blame for unpopular decisions from the executives. He then illustrated risks and advantages of these choices. While delegation to NRAs removed the political biases giving credible commitment to long-term policies, a number of drawbacks and risks remained, especially with regard to the issue of the relationship between independence and legitimacy. Remains still an open question the political decision on which consumers, whether existing or future ones should be protected (introducing a time dimension in the social acceptability of energy policies).

Finally Prof. Napolitano underlined that a more traditional, direct consumer protection strategy could be an easier policy for regulators than fostering consumers' empowerment. In fact, the enactment of a regulation is expensive, but after the adoption, the regulator's task only consists in monitoring its correct implementation and enforcing it. Conversely, with consumers' empowerment, the outputs are more uncertain. According to the speaker empowerment can be at least of two types: legal empowerment (right of switching, obligation for suppliers, duty of disclosure, and so on) and operational activities aimed at strengthening the market position of consumers through the promotion of voluntary aggregation, price comparison tools, advice and information exchanges. In his view, this perspective confirmed that agencies and corporations (being them public or private) could be, at least for the second class of activities, better fitted than NRAs to stimulate consumers' empowerment. This further explain the tendency to support towards NRAs in enhancing consumer protection rather than empowerment.

Antonio Nicita (University of Siena): "Consumer protection 2.0. : What happens if you go forward in consumer protection and empowerment?"

Prof. Nicita opened his presentation by describing the state of art of the liberalization process from an economic perspective, showing that while from the supply side competition is quite developed,

the trends showed by retail prices (demand side) reveal that the impact of liberalisation is not as strong as supply-side indicators could suggest. This implies that, even after liberalization, access to consumers remains an unsolved issue. In other words, once a firm enters the market, it is very difficult for it to reach consumers, to increase market shares and to induce consumers to switch. From that starting point Prof. Nicita defined three possible phases of market development: a first phase, which focuses on the supply side; a second phase focused on consumer protection and a third, more recent approach, centered on consumer empowerment.

When illustrating the consumer protection phase the speaker focused on some general economic trade-offs. A fundamental trade-off is that between available information (to firm and consumer) vs discrimination. Granting access to information both on the supply side and on the demand side could be beneficial to some consumers, but could also induce price discrimination. Companies might tend to exploit the relative stickiness of the less dynamic section of consumers to underprice the offer for the most advanced one. An important aspect of this trade-off is the so called "informed choice and informed profiling": detailed information on consumers' choice reveals private information to the companies. However, this information is not publicly available and could be used to do better individual (or aggregate) profiling. In economic terms this could mean increasing discrimination. Discrimination itself could lead to efficiency, but could also decrease competition. Therefore, the main issue to consider when discussing data dissemination and its use is how to use consumers' information, whether by targeting private or publicly available information (open data).

The second trade off takes place between available information and market power. The classical approach to consumer protection is based on exogenous conditions, assuming that beliefs and information are given. When endogenous conditions are included, assuming that both firms and consumers learn about themselves and about market opportunities, the picture changes. Traditionally information was assumed to bring higher efficiency. At the same time also the relationship between more information (from the supply side) and greater ability to discriminate has been proved. Again a fundamental trade-off emerges: information creates value for firms while increasing market power. On the other hand, if one uses information to raise people awareness, the benefits for consumers will be uneven. This creates two sets of problems. Firstly, from the supply side viewpoint, the competitive advantage of the incumbent derives precisely from information asymmetry. From the demand side viewpoint, however, endogenous factors must be considered: not all consumers know what they want and reciprocal learning could be beneficial.

These economic issues imply a number of new challenges for regulators. Prof. Nicita has suggested a shift from the legal setting to an "automatic" setting. Once smart readers will be able to diffuse information through new channels, regulators should decide how dynamic this process should be and how far to go in this respect, provided that simply giving access to database is not enough to induce switching. The main issue which has emerged is that the regulators, under these new "automatic" devices, could not only shift towards providing a platform for information sharing, but also actively

forcing suppliers to offer better deals (e.g. provide standardised offers) on the basis of consumers behavior. The speaker concluded that these are some of questions that should be further debated and considered carefully in the coming years.

Hans-Wolfgang Micklitz (European University Institute):"European approach to unified consumer protection practices"

An additional fundamental issue which has been addressed in the first session concerned the "societal dimension" of consumer law and the relationship between general and specific rules. Having analyzed in depth EU consumer law, Prof. Micklitz has argued that the liberalisation process requires a more radical change in society, rather than a simple regulatory intervention, and calls for new design of consumer protection rules.

Energy is a fundamental service for human beings; it is crucial for society and its importance reaches beyond the market. Behavioral economics and its focus on the real world can help design market regulation. However it is not yet covering the societal dimension of consumer behavior. A crucial issue for regulators is that they have to handle different types of consumers. Leaving behavioral economics aside, even legally, the EU envisages different types of consumers: one type of consumer is represented by the "super-consumer" (i.e. well informed, ready to switch, responsive), identified by EU law as "small and medium size consumer". EU law also envisages a second class of consumers, namely "vulnerable consumers", although this concept has not been clearly defined by EU law and national legislation.

Some crucial issues for consumers have not been sufficiently discussed at EU level (e.g whether there is a right to access the network for consumers who are disconnected or not); moreover, EU law refers to "price adequacy" and "fair price" but does not specify their meaning.

According to Prof. Micklitz a greater involvement of consumer associations is necessary to enhance the position of consumers. Further consideration should be given to the possibility for EU law to move forward than simply setting information duties, by promoting standardized contracts and prior approval models following behavioral economics insights. Other issues which, from this point of view, should be addressed more carefully by EU institutions refer to the protection of vulnerable consumers: do MS understand these issues as social policy to be outsourced, or as energy problems to be dealt by regulators? The way these issues are framed contributes to determine the exact nature of consumer protection.

A further issue that has been considered is the need to encourage switching. In relation to this, the speaker suggested that institutions should focus on the duration of contracts, eventually coupled with the entrustment of a right to switch free of costs and with price transparency and price comparison tools.

This last issue introduced the need for a further discussion on the remedies related to consumer protection practices, provided that EU law does not say much about remedies and does not solve problems related to the intersection between specific and general rules.

Despite the proactive approach of the EU institutions in the field of Alternative Dispute Resolution – ADR (e.g. a new Directive is under discussion; while a recent ECJ judgment turned a Recommendation by the Commission -Rec. 98/257/EC on out-of-court settlement of consumer disputes - into a binding piece of law), the speaker concluded that it appears to be a lack of political discussion on some crucial issues regarding consumer protection.

Session II – Regulatory authorities, best practices and powers

(Chair: Prof. Fabiana Di Porto – University of Salento)

As competition increases in the energy sector, consumers face new opportunities: they have a wider range of choices, but also face new challenges, given the greater complexity of the choices. Consumers' active participation in the market is fundamental for competition to develop. At the same time, managing to help the emergence of dynamic consumers is a goal in itself for regulators and implies a significant change in the scope of their activities. Consumer protection does not relate anymore only to abusive behavior, but became a matter of empowerment, information and eventually education.

EU institutions have put great efforts in placing consumers at the center of energy policy and to build a common understanding of what regulators should do to empower consumers. Overcoming national diversities in the implementation of pro-consumers measures is central for the Commission, but is also the core business for CEER, the London Forum, and European consumer associations, such as BEUC. Specialised working groups within these bodies have released benchmark reports, spreading good and best practices on a variety of topics such as consumer information and education, public consultation, complaint handling, dispute settlements, transparency, price comparison, data gathering and smart metering.

Despite these efforts, pro-active consumers and truly competitive energy markets are still far from being reached. Behavioral studies have questioned the concept of "average consumer" upon which EU policies are mainly based and affirmed that "attitudes" more than experience affect consumers' behavior. These findings radically question the very notion of consumers and claim for a more sophisticated definition of different types of consumers, in order to design effective pro-consumers rules.

Moreover, behavioral studies have shown that widening the range of choices for consumers does not necessarily imply that they will be able to take free, responsible and conscious choices, due to several biases. These findings challenge EU energy policy, according to which providing consumers with easy and accessible information on consumption and costs would increase consumption and switching.

Finally, depending on whether consumers are seen collectively or as individuals, their behavior may prove to be close or far from expectations. This requires a thicker understanding of consumers' needs through research and cognitive-based surveys.

The recent debate on behavioral economics calls for reconsideration of consumer protection in

the light of empirical cognitive data. It should be evaluated whether we need to give NRAs new powers or to reshape their existing ones. Furthermore, it should be investigated whether it could be appropriate to give more power to consumer associations (as in the UK). Greater emphasis should be put on enforcement, the stage where regulators get feedback from consumers. Behavioral economics findings call for more flexible and more responsive regulation. Failing to regulate responsively and flexibly could otherwise constitute, as some contend, "an expensive process of shooting in the dark", thus suggesting to NRAs to "stay flexible and stay responsive".

The second Session has addressed the question of how behavioral economics findings may affect consumer protection in practice. In this aim, experiences of national regulators and regulatory associations at both the European level (CEER and UK) and in the former Yugoslavian and southern eastern countries (Energy Community) have been explored.

Particia de Suzzoni (CEER): "Role of CEER in European energy markets"
Roseta Karova (Energy Community) "Energy Community Regulatory Board: Regional approach to consumer protection"

The opening presentations in this session have described the role of CEER and the Energy Community.

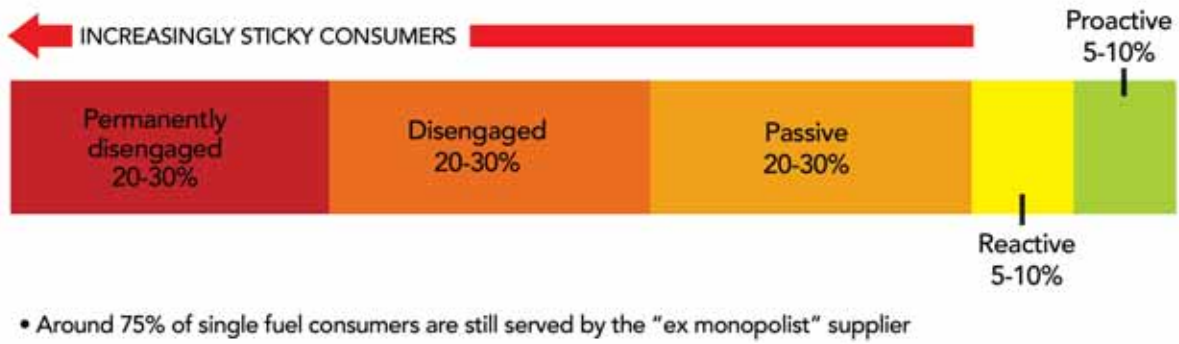
The first one is a non-profit association which encompasses national regulatory authorities from EU Member States and some non-EU European countries. CEER releases reports, guidelines of good practices and other output addressed to NRAs and energy providers. These documents are prepared in a transparent manner, involving a wide participation and dialogue with stakeholders, especially with consumers and consumers' organizations, but also with the industry and the energy providers so to develop a regional energy policy. This type of organization may represent an example of the mutual learning process auspicated by the debate on "reflexive government". In particular CEER has a dedicated "Customers and Retail Markets Working Group" (CRM WG) where there is a constant engagement with customers putting their needs at the center of EU energy policy. Some of the recent public document on customers hare concerned issues such as: Retail market design (eg switching, billing); demand response with smart meters; customer complaint handling; Alternative Dispute Resolution; regulatory aspects of smart metering; end user price regulation and transposition of consumer rights, just to name the most recent.

The Energy Community is an institution that gathers former Yugoslavian and Eastern European countries. It is a legally binding agreement between EU and South Eastern European countries that was launched in 2005-2006. Its main objectives are in the short term to create a stable regulatory space; in the medium term to create a regional energy market; in the long term to be fully integrated with the EU internal energy market. The Energy Community Regulatory Board, in particular, is a platform for cooperation for NRAs which advises and supports contracting parties in implementation of policies.

Sarah Harrison (Ofgem): "Role of regulators on customer protection"

National experiences have also been explored in this Session. The UK energy regulator, OFGEM, has a crucial role in the protection of existing and future consumers' interests. OFGEM is both a competition authority as well as a sector-specific regulator and shares competition law and consumer protection duties with the UK competition authorities (OFT and the Competition Commission). Its main objective is to ensure consumer protection through the promotion of competition. However, over the last decade consumers' protection through regulation has increased in relevance. One of OFGEM's duties is the protection of "vulnerable consumers" (i.e. those with low incomes, poor health, and the elders), however there is scope for a more sophisticated and wider concept of vulnerability (e.g. less educated consumers, who should be gradually included, given the growing complexity of energy markets). In general the speaker underlined the importance to recall that there are different types of consumers that can be classified according to their level of engagement. In this respect, figures regarding the UK showed that only 20% of consumers could be defined as active in the market (see graph 6, below)

Graph 6 - Consumer engagement in UK energy markets



• Around 75% of single fuel consumers are still served by the "ex monopolist" supplier

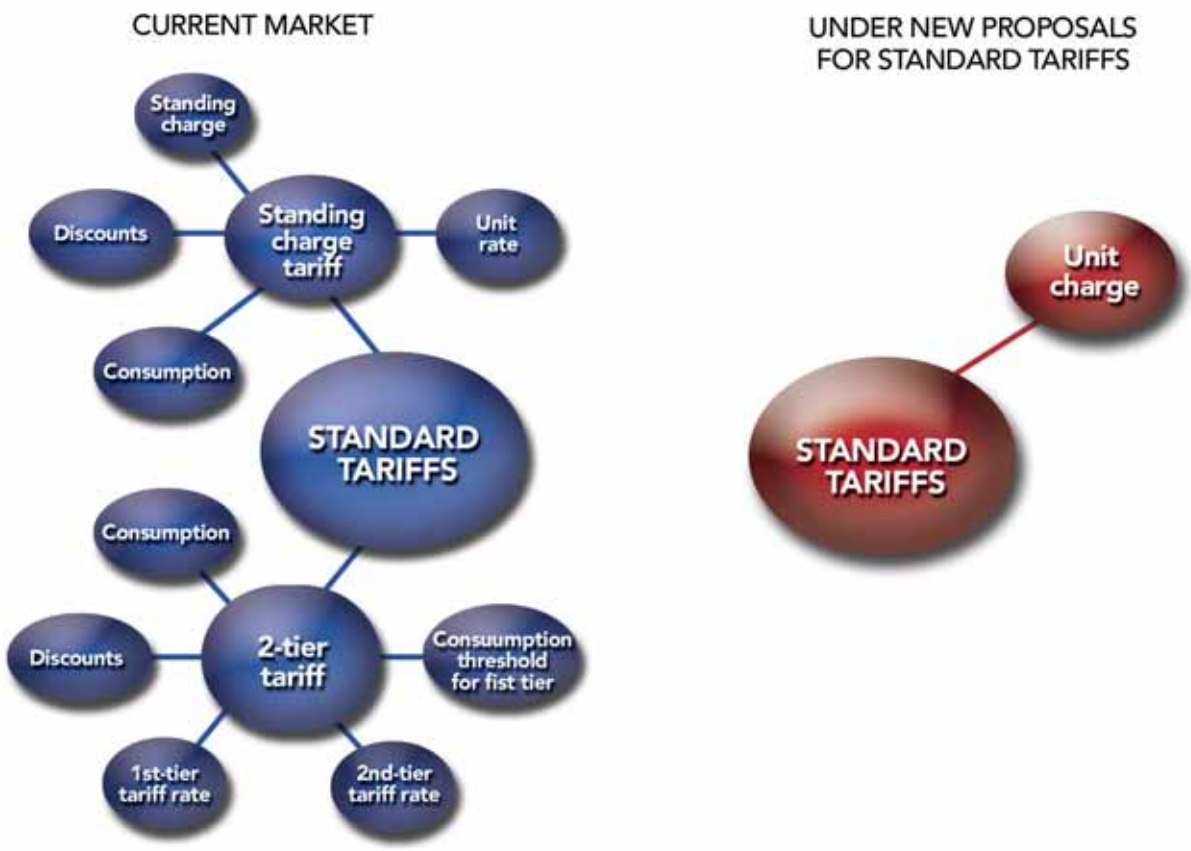
In relation to consumer protection, Ms Harrison recalled the UK proposal for the reform of retail market that is more founded on a principle-based model approach to regulation: the attempt being to include standards of conducts in the license framework so as to make them enforceable. What follows is a general shift from input-based regulation toward an output-based one.

Other important retail market reviews that have been illustrated related to consumers' empowerment (e.g. role of consumer associations, creation of energy Ombudsman, energy market campaign, retail market review). On such matters OFGEM plays a leading role: it promotes transparency by publishing regular data on costumers, putting more information in the market and allowing an easier dissemination and access to relevant market information.

As underlined by the speaker enforcement tools are radically different from compliance as they aim to foster a culture of compliance, rather than just monitoring it. In this vein, new instruments have been attributed to OFGEM: more extensive sanctioning powers, consumer redress, collective redress in the event that a license has been breached. These changes follow the evolution of the regulatory approach mentioned before.

Most importantly, behavioral economics findings are lately being applied in the UK market and greater attention and resources are now being placed on consumer research and testing. Retail market reviews prompted OFGEM to consider further actions in order to strengthen consumers' engagement and to make markets work more effectively. In particular, there has been a great deal of work on tariffs: in order to create standard tariffs and non-standard tariffs, proposing a more prescriptive approach in the area of standard tariffs in order to reduce the number of tariffs and to simplify the way they are presented (see graph 7 below). Specifications of information to consumers in an understandable language, with greater transparency and allowing smarter enforcement strategies are developments taking place in the British market, as well. These examples represent a partial but interesting review of the various policies in place in the field of consumer protection, showing an increasing interest for cognitive-based tools.

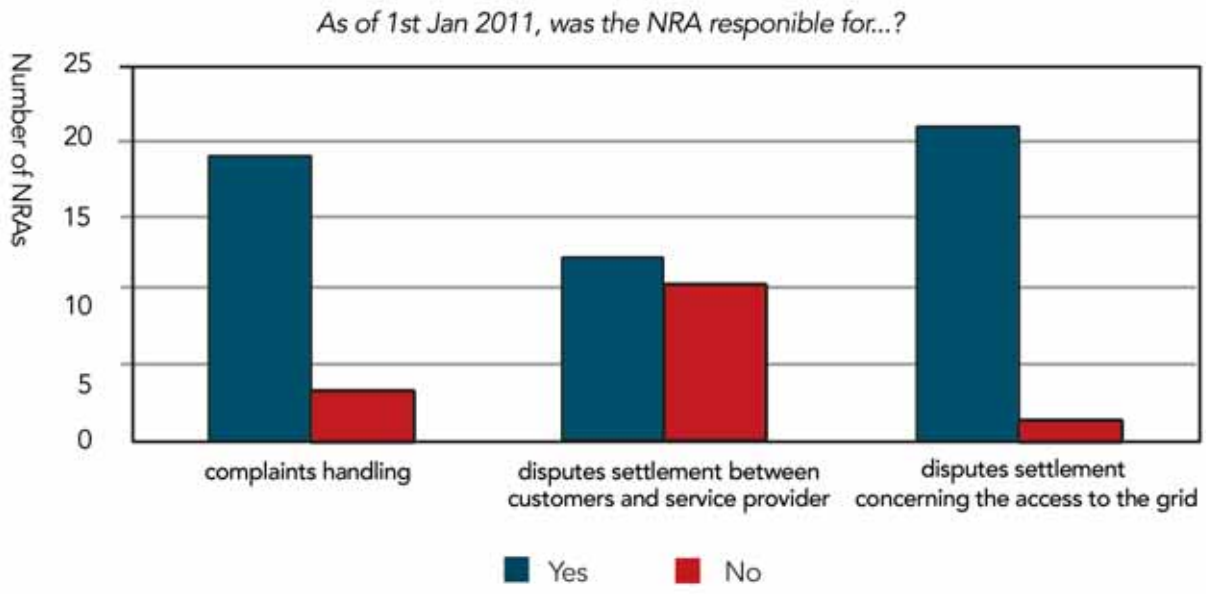
Graph 7 - Comparison of standard existing tariff and new tariff proposal



Patricia de Suzzoni (CEER) : "Role of regulators in consumer protection: Diversity of approaches in Europe".

Mrs De Suzzoni presented a benchmarking report by CEER on the role and responsibilities of NRAs in consumers' empowerment and protection. The report refers to the time period preceding the implementation of the Third Energy Package and covers areas such as complaint handling, dispute settlements, protection of vulnerable consumers, energy efficiency, and customer information. The key findings showed that as of January 2011 all responding NRAs (18 out of 22) were responsible for at least one of the above mentioned tasks (see graph 8 below).

Graph 8 - Survey answers on core activities and NRA responsibilities on consumer protection.



In most cases NRAs represent the first contact point for consumers and constitute a tool to reduce legal disputes. By contrast, the review showed that the responsibility for the protection of vulnerable consumers was generally allocated to other public institutions (only in a limited number of cases was dealt by NRAs).

Secondly, some examples, particularly stemming from the French experience, have been presented with regard to the protection of vulnerable consumers, end-user energy efficiency and consumers' information.

Finally, as a result of the benchmarking report, a list of good practices has been proposed. Among those: the promotion of information services that prevent complaints and formal litigation; a common tendency to empower customers through the provision of cognitive and operative information tools (particularly to vulnerable ones); strong cooperation with other stakeholders involved in the protection of consumers; use of a bottom-up approach consisting in collecting information from consumers to be used as input for regulatory revision.

As highlighted by the Chairman, it appears, in conclusion, that the process of information shar-

ing, adequate information spreading, cooperation and consultation, may be a sign of the shift towards a more "reflexive" style of regulation and an increase in "nodality": the regulator becomes the central node of a network, a platform for information sharing.

Richard Hall (Consumer Focus): "Consumer groups and regulators experience from the UK"

A peculiar national experience of consumer protection has been presented by Mr Hall: that of the UK, where a range of governmental consumer associations exist including Consumer Focus (CF), that has a number of duties in representing "vulnerable" consumers' interests. In many areas CF merely responds to Government and regulators' policies, and makes use of evidence from consumers, through consumers' contacts. CF has also some scrutiny functions: it produces reports on complaint handling (by Ombudsman), quality, speediness, quantitative evaluation of complaint handlings. Compared to similar organizations CF enjoys strong statutory powers to ensure vulnerable consumers' protection. The latter include: investigation powers and report on systemic problems, the right to access supplementary and confidential data, the power to make "super-complaints" to sector regulators, and "umbrella powers" to develop its own tools to protect vulnerable consumers. Moreover, whenever a complaint comes from the latter, CF is bound to intervene. In terms of costs of action CF estimates consumer benefits of nearly £18 for every £1 spent in financing CF.

Generally speaking CF deems consumers associations to represent a counter-balance of the power of utilities in the consultation process (mandatory in the UK), as they allow bottom-up exchange of information and promote efficient market mechanisms, such as the certification of price-comparison and switching-measuring tools.

Mr Hall illustrated two case studies, taken from areas where consumer groups actually represented an added value to the work of regulators. The first case was an example of positive interaction between regulators and consumer associations, whereas the second showed difficulties in such interaction.

In the first case, vulnerable consumers were being disconnected after payment delay, a practice that is forbidden since 2009, when the self-regulation code came into effect requiring suppliers to take into account consumers' ability to pay when setting debt repayment rates, as some suppliers applied rates which resulted to be excessive. CF brought this evidence before OFGEM, which shared its view opening a fast truck investigation. In the meanwhile, CF required information from the utilities suggesting the suspension of disconnections, a request that was refused. As the problem exacerbated CF reported two companies before the regulator, who enforced a decision against the suppliers, using information provided by CF. As a result, suppliers changed their policy, suspended disconnection in winter times, and were imposed to review and improve their billing and disconnection policies. Consequently, the information gathering power of consumer groups and the greater legitimacy of consumers association gave confidence to users.

The second case concerned a major gas supplier which changed its pricing policy and made consumers worse off. CF deemed that price changes were not justified and correctly explained. CF brought the case before OFGEM, which deemed the increases lawful and obtained from the supplier a symbolic payment of £6 each to 200.000 consumers (a total of £1.2 Mln) and closed the case. CF was still concerned that the supplier benefited by misleading its customers. Making use of its "do anything" statutory powers, CF then opened a negotiation with the company and made clear that it would facilitate a class action lawsuit using its information gathering powers to get evidence.

Eventually the company agreed to repay £70 Mln to compensate 1.8 Mln customers: a far better result for consumers than the one achieved by the regulator. In this case the ability of CF to respond flexibly has proven to benefit consumers, and at the same time also regulators benefitted from this creative tension (shared learning, improved bargaining position).

Strengths of the GB model: Network regulation in the UK proved to be extremely successful. It has lowered consumers' costs while increasing reliability, and determined very low gas prices. The GB model has also improved efforts from regulators to embed consumers' expertise and to include consumer research into regulatory practices. In addition, the UK shows extremely high switching rates compared to international standards, even though the quality is not as high as the quantity (many consumers switch to worse tariffs).

Weaknesses of the GB model: Retail regulation has not proved to be as successful as network regulation. The market has not shown great deal of transparency so far for consumers; therefore it is increasingly difficult to understand which ones are the best deals and how to interpret the energy tariffs (a finding that confirms Prof. Waddams's statement about the many consumers who switched to worse tariffs). In addition, aggressive sales and services problems from the largest companies are still problematic in the UK leading OFGEM to open an investigation for unfair door-selling practices. A further and last weakness that has been debated regarded scarce market entry leading to wholesale and retail markets increased concentration, as a result of which switching options and opportunities are likely to be adversely affected.

Session III – Future trends in consumer protection. Smart consumer protection in a smart grid context

(Chair: Alessandro Ortis – Medreg)

Smart grids have been defined as "an electricity network that can cost-efficiently integrate the behavior and actions of all users connected to it: generators, consumers, those that do both, in order to ensure economically efficient sustainable power system with low losses and high levels of quality and security of supply and safety". The Chairman stressed the importance of the introduction of smart technologies also in the gas sector. In general, smart grids offer a number of contributions in the field of sustainable development, and in particular they enhance security of supply, competitiveness (price and quality aspects), and environment protection.

In addition, they help consumer choice to be freer, more informed, more mindful, rational and con-

venient, while contributing to the possibility of transforming consumers in consumer-producer also by giving consumers a real active role.

However, concerns related to the penetration of smart meters and smart technologies still exist. They raise serious issues in terms on privacy and data protection: in Italy for example AU is introducing an "Integrated Information System" (IIS) which considers and takes care of these issues.

The introduction of smart technologies requires large investments and might lead to higher prices in the short run. However, in the long run the price of the commodity is widely affected by the efficiency of the system. Thus gains and benefits more than overweight the costs necessary to guarantee the roll out of smart technologies. Summing up, smart technology needs smart regulation: smart rules and smart control. In this respect the role of IERN is very important for regulators, because it fosters mutual learning, collaboration, and exchange of experience. Smart technologies also push us to harmonize the legislative and regulatory framework and to give further importance to the dialogue between consumers associations, regulators and utilities.

Roberto Malaman (Autorità per l'Energia Elettrica e il Gas – Italian Energy Regulator)
"Regulatory aspects of smart technology"

Mr Malaman presented some of the main regulatory challenges stemming from the introduction of smart technologies. Technological innovation is bringing large opportunities for consumers, as smart grids are self-healing and adaptive; interactive with consumers and the market; optimise the use of resources, operate across boundaries, and can support the integration of the control center.

Concerning incentive regulation for smart grid development, the need to shift from "traditional tariff regulation" and (more recently) revenue allowance to energy network to specific types of regulatory incentives has been underlined. The latter could be output-based, based on network performance or input-based, depending on the specific kind of investment that one wants to promote (in Italy, for example, the regulator uses 2% of extra remuneration to finance pilot smart grids projects). In this context the role of regulators is to find the appropriate balance between costs and benefits for smart meters. They should keep a flexible approach in order to leave the maximum number of options open and to avoid lock-in risks. Facilitating switching, extending the time of use of electricity pricing, improving the quality of services to avoid discrimination, increasing consumer awareness and demand response are some of the goals that regulators should take into account when designing smart meter regulation.

Mr Malaman offered examples of good and bad interactions between regulation and technological innovation in a smart grid context.

As for the first, thanks to massive investments more than 30 Mln low voltage customers in Italy (ENEL's project) have been equipped with smart meters. As a result almost no remaining estimated billing should exist in Italy. Thanks to these technological developments remote disconnection power is now possible, meaning the possibility to reduce available power before disconnecting.

However, despite these technological progresses demand-response management is only at an initial stage. An example of this is the introduction of time differentiated electricity prices. The Regulator forced companies to measure electricity consumption for domestic customers divided in three bands: peak, off peak-level and mid-level hours. This has incentivized, starting from 2011, time differentiated prices, although in the first year the regulator forced the difference between peak and non-peak price to be lower than 10%.

In the meanwhile, another politically-sustained technological innovation took place in Italy leading photovoltaic (PV) and wind penetration to a sharp increase (in 2011 PV installations have reached almost 11GW, compared to 3.5 GW in 2010, a trend that has no equal in the world and that made further RES penetration hardly predictable). This phenomenon led to unexpected outcomes. While the 10% regulatory cap on price difference between peak and non-peak hours was justified when firstly introduced, as that difference amounted to 30%, it was no longer so later on, when that gap declined to 6% as a consequence of increased RES penetration (concentrated during peak hours). The combination of excessive renewable generation capacity with the economic crisis (reduction of consumption) and consumers' low switching nullified the effects of the 2011 pro-consumer regulatory measure, making final customer worse off.

In order for smart technologies to be a tool to improve consumers' welfare, concluded Mr Malaman, regulators and policy makers must adopt a completely different approach: they are called to think about the options that need to be kept open, to maintain the system flexible to adapt to smart technologies, while keeping the regulatory framework robust and stable in order to attract the much needed investments.

Karen Kavanagh (CEER) "Final guidelines of good practice on regulatory aspects of smart metering"

The representative of CEER Retail Market Task Force presented the guidelines of good practice on regulatory aspects of smart metering. The guidelines consist of 28 recommendations, covering 4 areas: data security and integrity; customer services; costs and benefits; and rollout of smart technology.

With regard to data security, smart meters enable to collect and manipulate a large amount of information from consumers. CEER recommends that requests about data that exceed metering data needed to fulfill regulated duties should be obtained after customers consent and by duly informing interested parties on how the data collected shall be used.

In relation to customer services, a number of recommendations have been issued (21 in total between gas and electricity). In particular, information on customers' actual consumption shall be provided on a monthly basis and free of charge. In addition, the relevant information shall be presented in a meaningful and user-friendly way. Moreover, access to additional information shall be granted upon request.

Bills, according to CEER's recommendation, shall be based on actual consumption; therefore this means that customers shall not deal with estimated bills that, at present, cause a significant proportion of consumers complaints.

Time-of-use tariffs, also need careful consideration by NRAs. Although smart meters allow for high granularity of the information on consumers' consumption, tariff complexity and overload of information should be taken in serious consideration when setting the format of the tariff. In addition, smart meters should allow retail and distribution company to operate remote power capacity reduction so as to avoid pure disconnection. This guarantees, at least for a limited period of time, to supply the minimum living standard for bad payers, and is particularly welcome in case of extreme weather conditions and for vulnerable customers. Additionally all costumers should be equipped with a metering device capable of measuring consumption and injection, so as to facilitate micro generation and an interface in order to determine how info is communicated to consumers.

CEER also recommends that a detailed and extended Cost Benefit Analysis (CBA) should look at benefits (and costs) for consumers, suppliers, DSOs and all participants in the value chain, in order to grasp the entire magnitude of the roll out process.

Finally CEER recommends that complementary work on demand response is undertaken, and in particular on building customers trust in demand response functionality.

Monika Stajnarova (BEUC) "Smart meters? Only when consumers benefit"

BEUC is the European consumer association, representing consumers' interest in Europe and has contributed to the workshop by illustrating the meaning of EU legislation on smart meters from the consumers' viewpoint.

The main positive aspects of smart meters on BEUC perspective are several. In particular the large penetration of smart meters will enable the end of estimated and inaccurate bills (although in some pilot projects there are still inaccuracies) while allowing the possibility to access real time information and historical consumption data. This in turn shall increase consumer awareness on consumption and favor, at the same time, better management of household consumption. Another direct effect of smart meters is the ability to identify more carefully people in need (potential vulnerable customers).

Notwithstanding the long list of benefits, smart meters penetration also raises a number of concerns from the point of view of the final consumer. Firstly, there are serious worries about the costs of smart grids, and how these costs shall be allocated among the different users. Secondly, BEUC considers the impact of time differentiated prices potentially detrimental to vulnerable consumers (who may be less flexible in their energy use), and consequently calls for special attention on this aspect. Other risks of smart grids for consumers are related to the already mentioned misuse of technical remote disconnections, remote management of appliance, privacy and security, health concerns about electromagnetic, lock-in of consumers in long term contracts, possible abuse of new bundles of services.

BEUC has stressed that the smart revolution requires a clear strategy on how to implement smart meters, information should be clear and understandable but also differentiated among classes of consumers (depending on their ability to deal with complex information). In addition there should be regular surveying and reporting on consumer satisfaction of smart meters services (and related obligations).

BEUC has also reported an example of a case of perverse incentives in the UK where a consumer

responding to time differentiated prices tried to be flexible by shifting consumption. They ended up being worse off by paying higher energy bill and, because of overlaps and blames shifting among different bodies, could not be redressed. This and other similar cases should make policy makers aware of the potential risks for unaware consumers. Thus, BEUC stressed that many different components (in home displays, accurate billing and advice, on-line information) that need to be combined optimally, in a smart technology environment, in order to guarantee a sufficient level of consumer protection. These components in addition rest on the assumption that a motivated consumer will be educated to deal with this increasing opportunities in the market. Therefore it is fundamental to engage consumers not only through encouraging widespread diffusion of accurate billing, introducing flexibility of payments, providing free access to real time and historical consumption data, educating consumers and assisting them to understand demand response schemes, but also by providing incentives, especially financial ones (e.g. the Denmark project), to foster active engagement into the market.

When testing, although imperfectly, people willingness to shift consumption, the general results show a diffuse resistance to change behaviors. This seems to suggest that a strong social market campaign should be addressed to raise public awareness on potential gains and advantages arising from smart meters and smart technologies.

Role Kaljee (Eurelectric): "Implementation and development of smart technologies: challenges and opportunities from a retail market design perspective"

Euroelectric presentation was mainly based on its recent Reports on demand-side participation and on a future-proof market design for customer-centric retail market[2]. Retail market design lies at the heart of the customer involvement in successful retail market and demand side participation. Regulators and policy-makers need to promote future-proof retail market. This means can be translated into simple costumer interface and simple market processes, which improve customers' awareness. Moreover the distinction between competitive and regulated retail markets should be clearly marked. All this should be coupled with confidence in market instruments: customers should be able to opt freely between a range of different products and suppliers that better reflect their desired engagement and willingness and potential to be energy aware. Consumer should also be potentially able to vary their supply service in terms of:

- choice of billing type and frequency
- choice of payment method
- choice of fuel mix

Consumer protection should also apply to electricity supply: sector specific regulation should only be in place when necessary and proportionate. Eurelectric is convinced of the necessity for some basic consumer protection rules, but balanced and supported by market forces. In theory consumers' ability, awareness and flexibility vary across a very wide spectrum of possibilities and it would be im-

2. "EURELECTRIC Views on Demand Side Participation" (August 2011) and "Customer-Centric Retail Market: A Future-Proof Market Design" (September 2011)

possible to design one single tool to motivate all consumers. However it deemed possible to indicate some basic principles that should guide an efficient design of pro-consumers energy retail market. These principles are included in the following 10 final recommendations made by Eurelectric:

1. Well-functioning wholesale markets
2. Clear roles and responsibilities
3. Removing regulated prices for end-users
4. Efficient information exchange
5. Customer interface
6. Single bills tailored to customers' needs
7. Consistency between customer protection and market principles
8. Reliable sources of information
9. Privacy and data confidentiality
10. Converging retail market design.

Case studies and pilot projects:

Carlo Bozzoli (Enel): "The role of the Distributor: Enel's pilot projects"

Before illustrating two pilot projects, Enel's representative described the Italian market as becoming more and more dynamic. Since the complete liberalization of the electricity market, 20% of the Italian customers (ca 8 Mln) have switched to the free market. Looking at the monthly movement of customers, a total of 250.000/month switchings can be observed. Of these, 130.000 come from the regulated market. A 10% of the monthly switching (ca 25.000) return back to the regulated market.

Enel, currently the major Italian distributor, has facilitated the market opening by developing a web trader portal that allows for quick transfer of relevant data, aimed at increasing switching. It also developed the Front Office Unico Rete (FOUR) as a dialogue channel for traders and producers. A number of initiatives to foster the diffusion of smart metering in other countries where Enel and its subsidiaries operate (Romania, South America and other emerging economies) have also been undertaken. In addition, in the past 10 years, Enel has proposed a number of advanced projects on smart meters aiming at shifting from intelligent devices to an active component of the smart grids, where distributors should play the role of market facilitator.

Mr Bozzoli then presented two Italian pilot projects related to smart technologies: Smart-Info and Energy@home.

1. Enel Smart-Info has been described as the natural extension of the current smart meter in the domestic grid, a device that is fully integrated in the Enel AMM solution (Telegestore). The project foresees that every indoor socket shall constitute an access point to the network. The purpose is to raise customers' awareness on energy consumptions. This project shall be tested in Isernia province among 6.000 costumers. The additional functionality of the meters will be provided through a wide range of media (displays, pc, etc.) available on the market. In this way a great deal of information will

be readily available to consumers.

2. Energy@home represents a form of spontaneous collaboration between 4 major companies: Electrolux, Enel, Indesit and Telecom Italia. The main aim of this cooperation is to develop a communication infrastructure that enables provisions of Value Added Services based upon information exchange on energy consumption and tariffs in the Home Area Network. It will allow to eliminate energy waste, facilitate energy saving and eventually to lower energy price.

Enel is convinced that these and other tools shall increase consumer awareness on energy consumption, but in its opinion there is a need to incentivise consumer behavioral changes trough specific education campaigns and dedicated investments (or support schemes) to promote the use of intelligent home appliances.

Manuel Sanchez Jimenez (DG ENER, European Commission): "EU support and actions towards the deployment of smart grids"

The European Commission's presentation underlined the utmost importance of promoting a competitive environment in energy markets and at the same time protecting consumers' interests in a smart environment. The Commission is aware of this tension and has shown in this forum a part of the actions that is planning to put in place in order to guarantee that both goals are achieved in a harmonized way.

After collecting data on pilot-projects the Commission has come to assess that experiences of smart meters are not very widespread. Despite this, it is convinced that smart meters will contribute to the development of internal energy market, consumers' empowerment, energy efficiency, accurate and transparent billing, and enhancement of retail competition. At the same time, challenges for smart technologies deployment come from issues related to security and data protection; the existence of a good infrastructure; the setting of standards granting interoperability; good regulation and incentives' design; and collaboration in the rollout of smart meters.

The Commission made clear that a strong relationship exists between retail market design, consumer engagement and infrastructures. In order to allow smart technologies to fully deploy their benefits the Commission developed a strategy based on five action points: firstly, competitive retail markets should be sustained in the interest of consumers; secondly, smart technologies should be used to improve consumers' protection, accuracy, transparency and energy efficiency, while ensuring data protection; thirdly, as electricity can be smarter but not cheaper due to high investment costs, standardization must be ensured; fourthly, given potential economies of scales, regulatory framework should be revised and incentives adjusted; fifthly, stimulating innovation and roll-out projects should be coupled with consumer engagement, calling for consumers to be involved in pilot projects from the very beginning. In this latter vein, Commission is preparing a communication on the 3rd package implementation, where smart grids and meters are addressed.

Ensuring the move from innovation to deployment can be done by making complement use of policy, regulation and innovation. In particular, in the Commission's view regulation represents the a

trait-d'union between policy and innovation; this vision is at the heart of its Proposal for a regulation for Energy infrastructure of 2011. As for standardization, three mandates (on Smart Meters, Electrical Vehicles and Smart Grids) have been put in place and a first set of standards is to be adopted by the end of 2012. Additional guidance is expected to be communicated and released on three interrelated issues: a communication on the cost-benefit analysis (CBA) for smart metering; guidance on data privacy and security; and guidelines on common minimum functionalities for smart metering, allowing different options, encouraging member states (MS) to go beyond those minimum functionalities in their CBA.

The Commission highlighted the importance of CBA providing insights on how it should be made (methodology) in order to consider the widest possible context. Taking into the utmost consideration all parties impacted by the use of smart meters is a complex task, but is still necessary in order to allocate costs correctly (e.g. if most of the benefits go to the industry it would be difficult to allocate all costs on consumers).

As part of its work program for 2012, the Commission foresees a "reactivation" of its Smart Grid Task Force, which will be participating in both the Florence Forum (industry) and the London Forum (consumers). By doing so the Commission aims at fostering a holistic view while promoting itself as the steering body for cooperation among all stakeholders in the implementation of smart grids and meters.

The Commission concluded by illustrating its further 2012 work program, that includes important provisions related to consumer protection, and in particular Commission guidance on preparation for the roll-out of smart metering system as well as a new legal framework for data protection.

Conclusions - Jean-Michel Glachant (Florence School of Regulation)

1. At the opening of the workshop, it seemed that consumer protection was something belonging to the past, a paternalistic approach that is now overcome and outdated. After the conclusion of the workshop, it is clear that it is indeed a natural dimension of the market. Since consumers still face uncertainty on energy consumption and on contracts with suppliers, they need protection and shall have the right to be protected. This means that mistakes of consumers need to be cured by regulators.
2. What is less clear is the distinction between consumer protection and empowerment, a question that at the moment it is still at its early stages far from provide a definitive answer .
3. In the EU consumer protection is mandatory, it is not a choice, and represents together with market integrity, market transparency, prohibition of abuses dominant position, privacy and data protection (also mandatory) one of the pillars upon which market liberalization is built. Therefore MS are compelled to effectively protect energy consumers.
4. Consumer protection calls for a long term vision on the shape and structure of energy markets. It seems that low energy consumption, and a low emission society coupled with deep knowledge on how market and individual decision making is formed will increasingly play a relevant role in the development of EU regulation of energy markets.

Concluding remarks and next steps

From the discussion as summarized above, a number of interesting and promising strands of possible areas of further development have emerged. We think that a series of interesting open questions might benefit from a dedicated forum of discussion that could include part of the speakers and institutions involved in the workshop "Consumer Protection in Europe". We believe promising areas of further analysis could be represented by the following:

1. Is the empowerment of the average consumer able to discipline the market?
   1.1. How can we define the "average consumer"? (in terms of level of consumption, or in terms of market engagement).
2. Who we need to protect? All consumers? Given the lack of common definition of vulnerable customers, is it possible to harmonize it at EU level?
3. Protecting some consumers reduce the empowerment of others? Are these complements or substitutes?
4. Who is best placed to foster consumer empowerment? NRAs or (variously defined) agencies?
5. Is there room for a treatment of consumer protection as a cross sectorial issue? Is it qualitatively different to empower energy consumer from empowering telecommunication or transport services consumers?

Bionotes speakers

Jean-Michel Glachant

Jean-Michel Glachant is Director of the Florence School of Regulation and Holder of the Loyola de Palacio Chair at the European University Institute, Florence. He is Professor in Economics and holds a PHD from La Sorbonne University, Paris. Jean-Michel is Member of the EU-Russia Gas Advisory Council of Commissioner Oettinger (EC), he is or has been advisor to DG TREN, DG COMP, DG RESEARCH and DG ENERGY of the European Commission and Coordinator / Scientific Advisor of several European research projects like THINK, SESSA, CESSA, Reliance, EU-DEEP, RefGov, TradeWind, Secure and Optimate. He is member of the Advisory Board of the E-Price project and Research Partner of CEEPR, (MIT - USA), EPRG (Cambridge University - UK), and Chief-Editor of "EEEP: Economics of Energy and Environmental Policy", a new journal of the International Association for Energy Economics.

Catherine Waddams

Catherine Waddams (formerly Price) is a member of and was founding Director of the ESRC Centre for Competition Policy, established at UEA in 2004, and Professor in the Norwich Business School, which she joined in 2000. She has held visiting positions at the University of California at Berkeley, the University of Copenhagen and the University of Cambridge. Her research interests are in the area of Industrial Organization, and she has published widely on privatization, regulation and the introduction of competition, especially in energy markets

Giulio Napolitano

Giulio Napolitano is full professor of Public Law in the Faculty of Political Science at the University of "Roma Tre". He is a Member of the Steering Committe of the EGPL - European Group of Public Law, and a Co-editor of the Reviews "Economics of Services" (il Mulino) and "Law and Policies of European Union" (Giappichelli). He is a regular visiting in the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht di Heidelberg and he spent a visiting period in July-September 2008 as a Program affiliate scholar in the School of Law of the New York University.

Antonio Nicita

Antonio Nicita graduated cum laude with a degree in Economics and Social Discipline from Bocconi University of Milan he then pursued graduate studies at Cambridge and Siena where he earned his PhD in Economics. From 1997 to 2000 he served as an Economist at the Italian Antitrust Authority. In 2003 he founded with Pier Luigi Parcu a consulting company www.studioeconomico.it based in Rome, Italy and specialized on competition policy, antitrust and regulation advise. In 2006 he is visiting Fulbright professor in Yale, new Haven. He is one of the founders of the Italian Society of Law and Economics (www.side-isle.it) and he is now general secretary of the association). Prof. Nicita is the author of several publications on competition, regulation issues, economics of contracts and law and economics.

Hans Wolfgang Micklitz

Hans Wolfgang Micklitz was Professor at the University of Bamberg for Civil Law, in particular Commercial, Company and Economic Law (Privatrecht, insbes. Handels-, Gesellschafts- und Wirtschaftsrecht). Since 1997 Jean Monnet Chair of Private Law and European Economic Law at the European University Institute.

Fabiana Di Porto

Fabiana Di Porto is Associate Professor at the University of Salento teaching Economic Law, and a senior research fellow at the Observatory on Intellectual Property, Competition and Communications at LUISS Uni-

versity of Rome. Graduated in law she holds a Master of Science in Regulation from the London School of Economics and Political Science as well as a PhD in Law, with a specialization in Competition Law and Energy Regulation, from the University of Perugia and the University Robert Schuman of Strasburg. With more than ten years of teaching experience in the field of energy law, competition, privatization and liberalization of public utilities, she wrote a book on Network Regulation and one Energy Law in Italy and has a number of articles to her credit, published in national and international journals. From 2011 she is co-director of the Italian annual journal "Concorrenza e mercato" (Giuffrè Ed.).

Patricia de Suzzoni

Patricia de Suzzoni is currently Chair of Retail Markets & Customer Working Group at CEER - Council of European Energy Regulators, Advisor to the Chair at CRE - Commission de régulation de l'énergie. She was head of CRE's directorate for 5 years, being in charge of monitoring wholesale and retail markets for both electricity and gas and managed the public service funding for the promotion of electricity from renewable sources. She also chaired, at national level, the stakeholders' working groups for the electricity retail market and consumer affairs. She previously worked in the telecoms industry, in Europe and abroad, for 20 years.

Rozeta Karova

Rozeta Karova obtained her Bachelor Degree in Legal Studies in 2003 from the Faculty of Law in Skopje (Macedonia). LL.M. Adv in European Business Law Programme in 2006 from the University of Leiden (The Netherlands): master thesis on the preparation of the Energy Community treaty. Ph.D. in Law, April 2011 from Law Department (EUI): Ph.D. thesis focused on the liberalization of the electricity market in the Energy Community. Currently working as legal expert in the Energy community Secretariat in Vienna, contributes to the overall monitoring of the progress for implementation of the Energy Community Treaty by assisting the Parties to the Treaty and reviewing the compliance of the measures taken by them with the Energy Community law.

Sarah Harrison

Sarah Harrison took on leadership of Ofgem's new Sustainable Development Division in September 09. From 2005 Sarah was Ofgem's Managing Director of Corporate Affairs and before that she was Ofgem's Communications Director. From 1994 – 1999 Sarah was the first Director of ICSTIS, the UK industry regulator for premium rate telephone services. Sarah's earlier career was in government and public relations consultancy.

Marielle Liikanen

Marielle Liikanen is a lawyer specialised in contractual law. She works at the Swedish Energy Markets Inspectorate as a Senior Advisor specialised in retail market design and smart metering. She is also the chair of the Retail Market Functioning Task Force in ERGEG and the vice chair in NordREG WG retail and distribution. A lawyer specialised in contract law, she studied at Stockholm University. Practised contract law at law firm for several years before going into energy area. She also represents CEER in Expert Group 2, that works on Privacy and Security in smart grids.

Richard Hall

Richard Hall is currently Head of Energy Regulation, previously Principal Policy Advocate at Consumer Focus, UK. In his past work experience he worked as Economist in the Markets department at Ofgem (UK). Before, he was Senior Associate at the Financial Services Authority, Manager in the Industry Codes & Licensing department at Ofgem. He also worked as Consultant and Analyst at ELEXON, as Tax Trainee at Ernst & Young and as Communications Manager at Hill Publications. He graduated with Honours in Geography at the University of Hull.

Alessandro Ortis

Alessandro Ortis was from December 2003 till February 2011 concurrently the Chairman of the Italian Regulatory Authority for Electricity and Gas, the Vice President of the Council of European Energy Regulators (CEER), the President of The Association of the Mediterranean Regulators for Electricity and Gas (MEDREG) as well as the Chairman of the International Energy Regulation Network (IERN). He was awarded the Honours of Knight of the Grand Cross of the Italian Republic and Chevalier de la Légion d'Honneur de la République Française. He is currently honorary president of Medreg.

Roberto Malaman

Roberto Malaman is an Economist with more than 25 years of experience in the field of economic research and utilities regulation. He currently is Advisor to the Board for Enforcement and Customers' Issues at the Italian Regulatory Authority for Electricity and Gas (Autorità per l'energia elettrica e il gas). From 2007 to 2011 he was General Manager of the Italian Regulatory Authority for Electricity and Gas (AEEG). From 1997 to 2006 he was Director for Quality and Consumer Affairs at AEEG, with responsibility for consumers protection, quality of service regulation (including adjustment allowed revenues to reflect quality of service), economic incentives to promote end-use energy efficiency (DSM). The position of Director for Research and Strategies was also covered in the past. He chaired the CEER working group on Quality of supply from 2000 to 2003; is a Member of the ERGEG Customer Focus Group since 2005. He also chaired the ERGEG Customer Switching Task Force in 2006. From 1984 to 1996 he carried out economic research and consultancy activities in the fields of industrial organization, environmental economics, utilities regulation, energy. Research and consultancy activities were performed for the European Commission (DG Environment, Industry, Technological Innovation), Eureka Secretariat, OECD, UN Commission for Sustainable Development, private companies and others. His publications consist of 11 edited books and more than 50 papers and articles on industrial organization, economic analysis of technological innovation, environmental economics, utilities regulation.

Karen Kavanagh

Karen Kavanagh is the Manager for Retail Markets in Gas & Electricity at the Commission for Energy Regulation in Ireland. She is responsible for the development and implementation of retail policy including the consumer policy aspects of the introduction of smart metering, and market monitoring. Karen is the Irish representative on the CEER (Council of European Energy Regulators) Customers and Retail Markets Working Group and in 2011 was Vice Chair of the Retail Market Functioning Task Force which has produced reports on both Smart Metering and Demand Response. She previously worked in the telecoms industry, at the Commission for Communication Regulation in Ireland for 7 years. She holds a BAppSc (Physics/Chemistry) from Trinity College Dublin and a PhD in Physics from the Dublin Institute of Technology.

Monika Stajnarova

Monika Štajnarová is a Junior Economic Officer at BEUC. Her main areas of expertise are Telecom and Energy, with a particular focus on the retail market design, energy efficiency and smart meters. She is also a member of the Smart Grids Task Force, set up by the European Commission (Directorate-General for Energy). Monika holds a M.Sc. degree in Economics and Business Administration.

Roel Kaljee

Roel Kaljee has working for the past 10 year for Energie-Nederland, the association of producers, traders and suppliers of electricity, gas and (district) heat in the Netherlands. He's responsible for regulatory and public affairs concerning the retail market and was involved with the liberalization and the structuring of the retail market. Within Eurelectric Roel Kaljee is chair of the working group Retail Markets which has focused its recent

work on a customer-centric retail market design with the supplier as the main point of contact. From this market model Eurelectric structures its input towards the Commission and consumer organizations, and the Citizens Energy Forum.

Carlo Bozzoli

Carlo Bozzoli, since 2009 is Head of the Network Commercial Services Department at Enel Distribuzione, as responsible for energy balance, passive and active connection, metering and billing, relations with the energy traders. He also oversees credit management, quality of services and customer satisfaction. In his past work experience in Enel's ICT, he was responsible for the Smart Meter Management project, then for the ICT Strategic Planning&Performance Management. At last he was Head of Enel's ICT Demand and Delivery for both the Infrastructures & Network Division and the Generation Division. Before 2000 he was in charge of Enel's Generation Division, working in several power plants and overseeing many ICT projects.

Manuel Sanchez-Jimenez

Manuel Sanchez Jimenez joined the Commission in 1996 as a Project Officer within the Renewable Energies Unit in Directorate General for Research. In 2004 he launched the European Technology Platform "Smart Grids". From 2007 to 2008 he has set up a new sector for "Information and Communication Technologies solutions for Energy Efficiency" at the Directorate General for the Information Society and Media. Since 2009 he is the Program Manager for Smart Grids at the Directorate General for Energy. He launched the European Task Force for Smart Grids in November 2009 and provide the contribution to the Commission communication on Smart Grids in April 2011. Presently chairs the Commission's Reference Group for Smart Grids. He holds degrees of Engineering (University of Seville, Spain) and Dr.-Ing. (University Kassel, Germany). Before his arrival at the Commission, he was the Director of the Plataforma Solar de Almería of the Spanish Ministry of Industry and Energy, the largest solar test centre in Europe.

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