

# **EU Regulators: good for the single market and EU policies**

**Jacques PELKMANS**

CEPS & College of Europe

Presentation, conference inaugurale de la Chaire 'Gouvernance  
et Regulation', March 26 2015, Univ. Paris Dauphine



# EU network industries: of two minds ?

- single EU market for network industries ?
- No such thing !!
- At least, not for four network industries with huge sunk costs:
- Electricity & gas, rail freight, telecoms
- Because EU always been 'of two minds'

# EU network industries (2)

- From 1957 Rome treaty (art. 86, unchanged today in art. 106, TFEU)
- And the 1958 Meroni ruling, interpreted as a prohibition of independent EU Agencies
- To nearly 30 yrs of liberalising/ regulating network industries, in combination with national & EU competition policy (since 1987)

# From Ad-hoc-ery to EU Strategy? (I)

- 74 Sacchi ECJ case 155/73, ruling in favour of status quo
- 75 Spinelli big-bang IM air transport [ failure]
- 84 proposal broadcasting IM ; lib.n regional air (modest)
- 87 IM-1992 + '85 ECJ transp. case >> 3 packages air transport ; telecoms Green P.
- 88 proposal gas & electricity lib.n
- 89 TV directive ; first rail proposal unbundling ; 1<sup>st</sup> telecoms case to ECJ
- 90 telecoms services dir. ; ONP telecoms framew. dir ; 2<sup>nd</sup> air package
- 91 railways unbundling ; ruling 2<sup>nd</sup> ECJ telecoms case
- 92 further telecoms dir.s
- 93 3<sup>rd</sup> package air tr.; Council wants full telecoms comp. 1998  
; Corbeau ECJ case Belgian Post
- 94 1<sup>st</sup> postal dir.
- 95 revised rail dir.s
- 96 1<sup>st</sup> electricity dir. ; full comp.n telecoms dir.

# From Ad-hoc-ery to EU Strategy? (II)

- 97 Amsterdam treaty [ Art. 16 + Protocol Broadcast.] ; cabotage air IM ; state aids air
- 98 full lib.n telecoms ; 1<sup>st</sup> gas dir. ; Reims postal Agreem.t
- 99 new proposals rail (freight)
- 00 Lisbon process begins >> netw. ind.s lib.n for comp.ness
- 01 1st rail package ;
- 02 2<sup>nd</sup> postal dir. ; new E-commun. regime
- 03 2<sup>nd</sup> electricity & gas dir. s ; draft Constitution Art. III-6
- 04 White Paper on SGEIs ; 2 nd rail package ; Single Sky EU
- 05 1 partial Agreem.t EU / US air space ;
- 06 gas / electra Inquiry (DG Comp.) results
- 07 Lisbon treaty >> protocol SGEIs ; 3<sup>rd</sup> rail package ;  
Audiovis. Media serv.s dir.; 3 rd gas & elect.y package  
+ ACER ; telecoms unbundling + EECMA proposed
- 08 3<sup>rd</sup> postal (full lib.n ) dir. ; air slots [2ndary trading]
- 09 3<sup>rd</sup> gas/electric package adopted; 3<sup>rd</sup> eComms  
package adopted
- 10 proposal single freight rail market; digital single  
Market / agenda
- 11 ACER and BEREC established;
- 12 Single EU railway area (recast)
- 13 4<sup>th</sup> rail package; single tel market prop
- 15 EU energy union

# Why no single market in NWI ?

- First the Sacchi doctrine i.e. NWI are not (really) part of the I.M. >>> MS business
- Overthrown, CJEU eComms cases (90,91)
- Yet, EU liberalisation took peculiar form: EU rules used for NATIONAL opening-up
- few powers for connecting national NWI islands, few EU funds,
- Deeply flawed approach

# Why no single NWI market?(2)

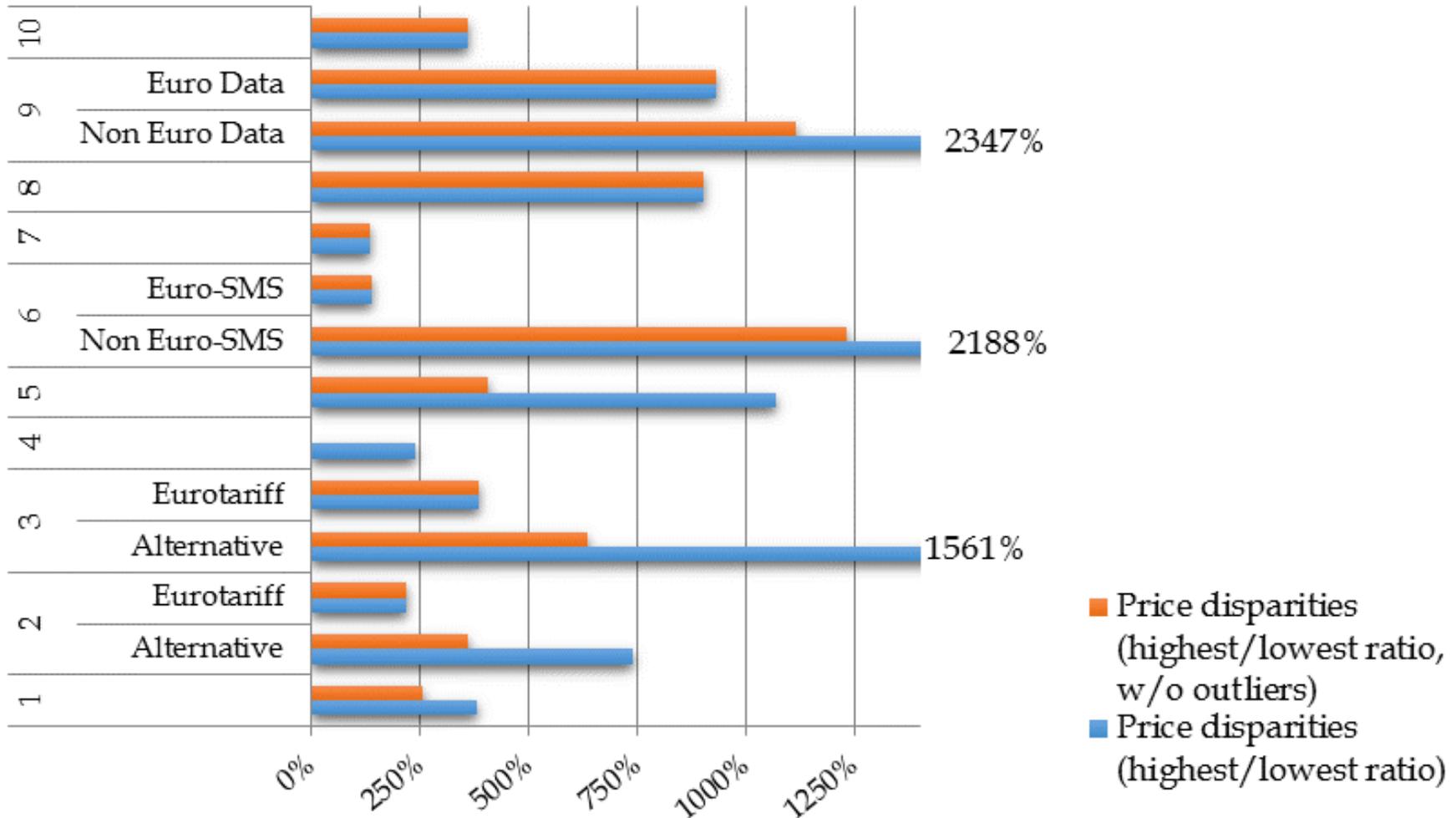
Legally, EU rules cannot be meant for NATIONAL liberalisation only – the legal basis is always the internal market

- Necessarily implies multi-level (EU & MS) coherence to establish the I.M.
- And have it function properly
- NRAs ought to serve BOTH levels, with the internal market prevailing where relevant

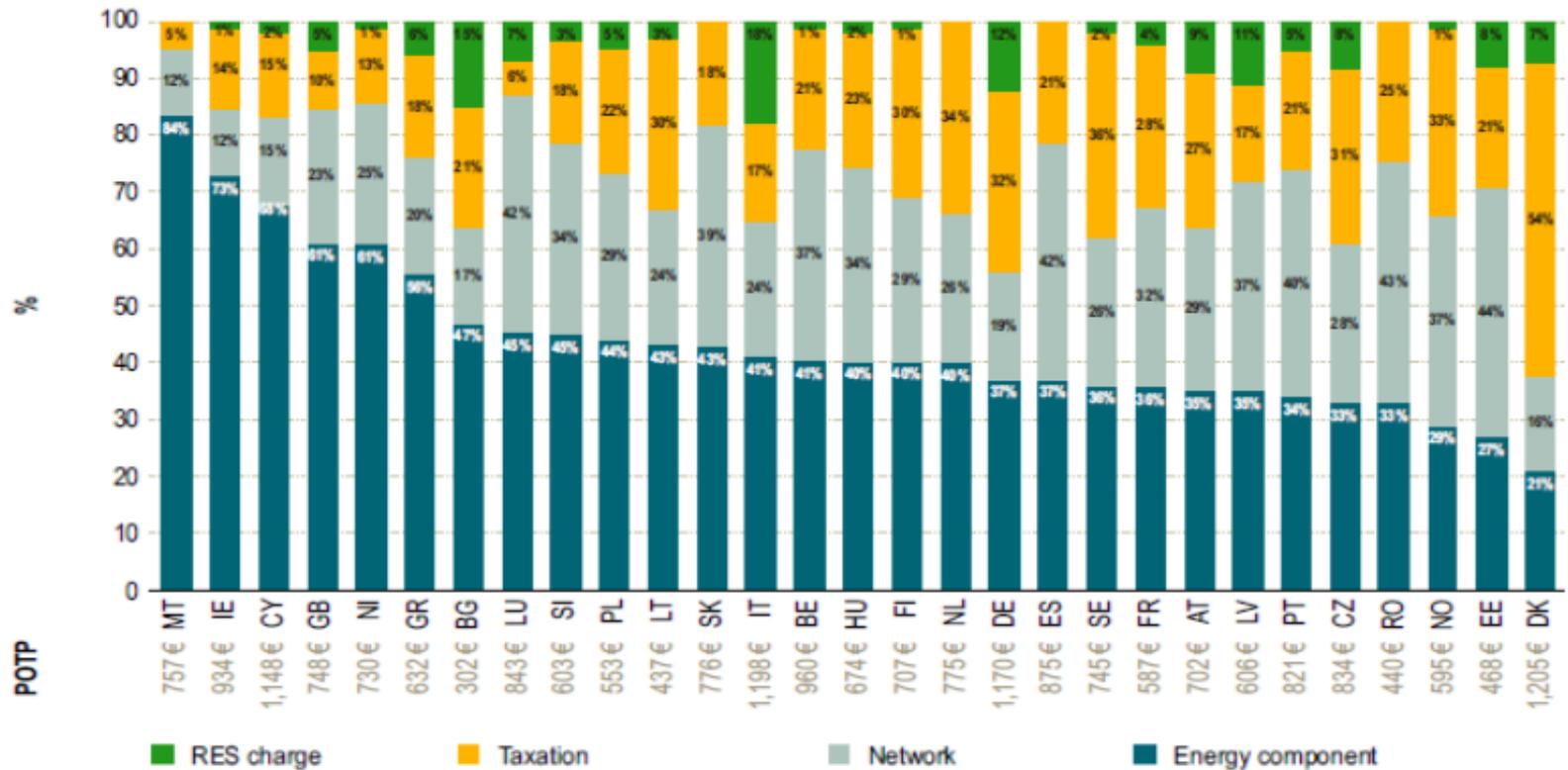
# Why no single NWI market ?(3)

- Economically, the case for the single NWI market is still strong today
- Our study's rough/incomplete estimate for the EP (Pelkmans et al, 2014) :
  - >>> some € 150 bn for eComms
  - >>> some € 47 - € 77 bn gas/electra
  - >>> some € 50 - € 500 bn rail freight
- Without a CGE model (hence, underest.)
- Without the many links with EU policies

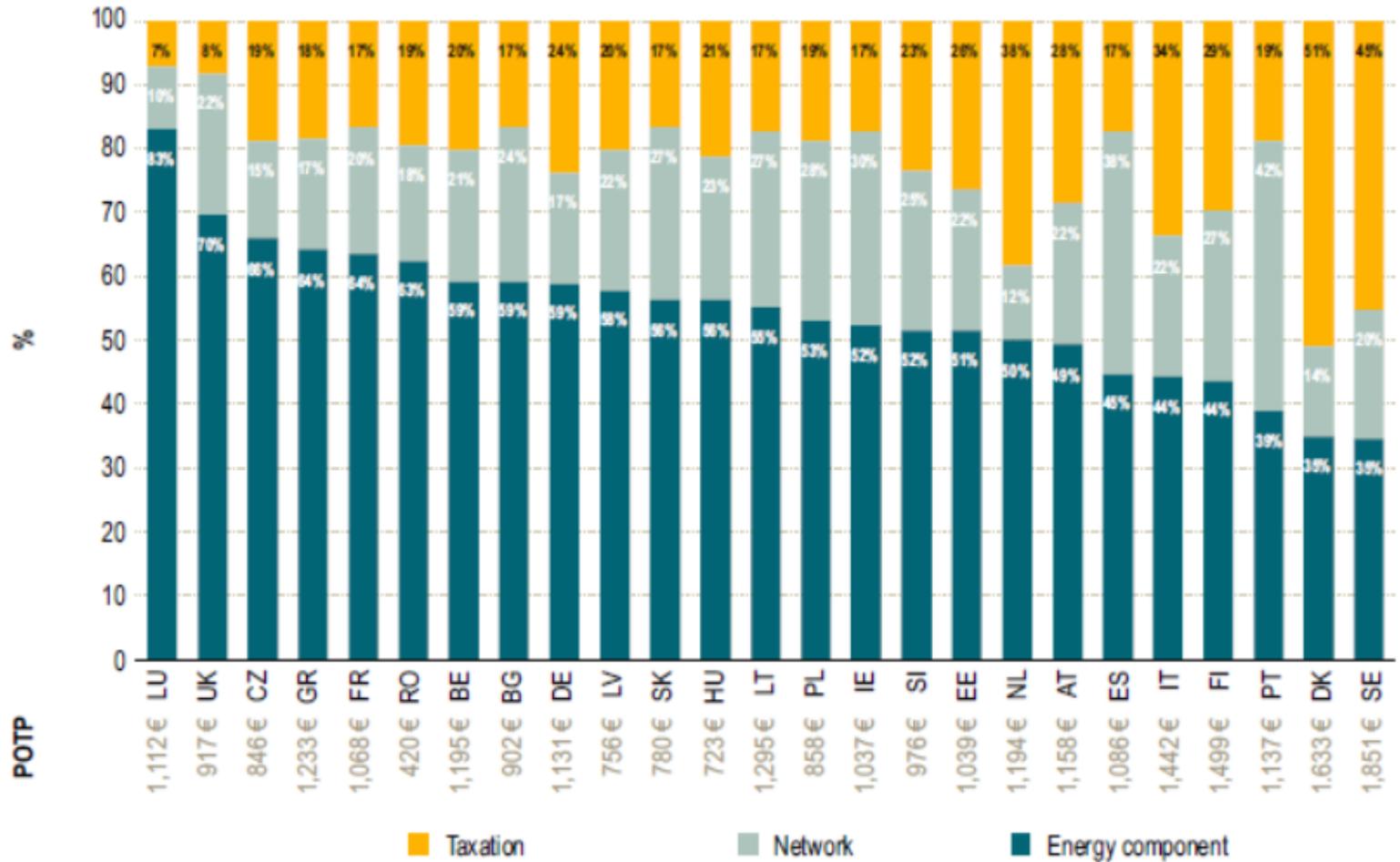
# Prices eComms services, huge disparities (2013)



# I.M. driving home electra pricing ? forget it

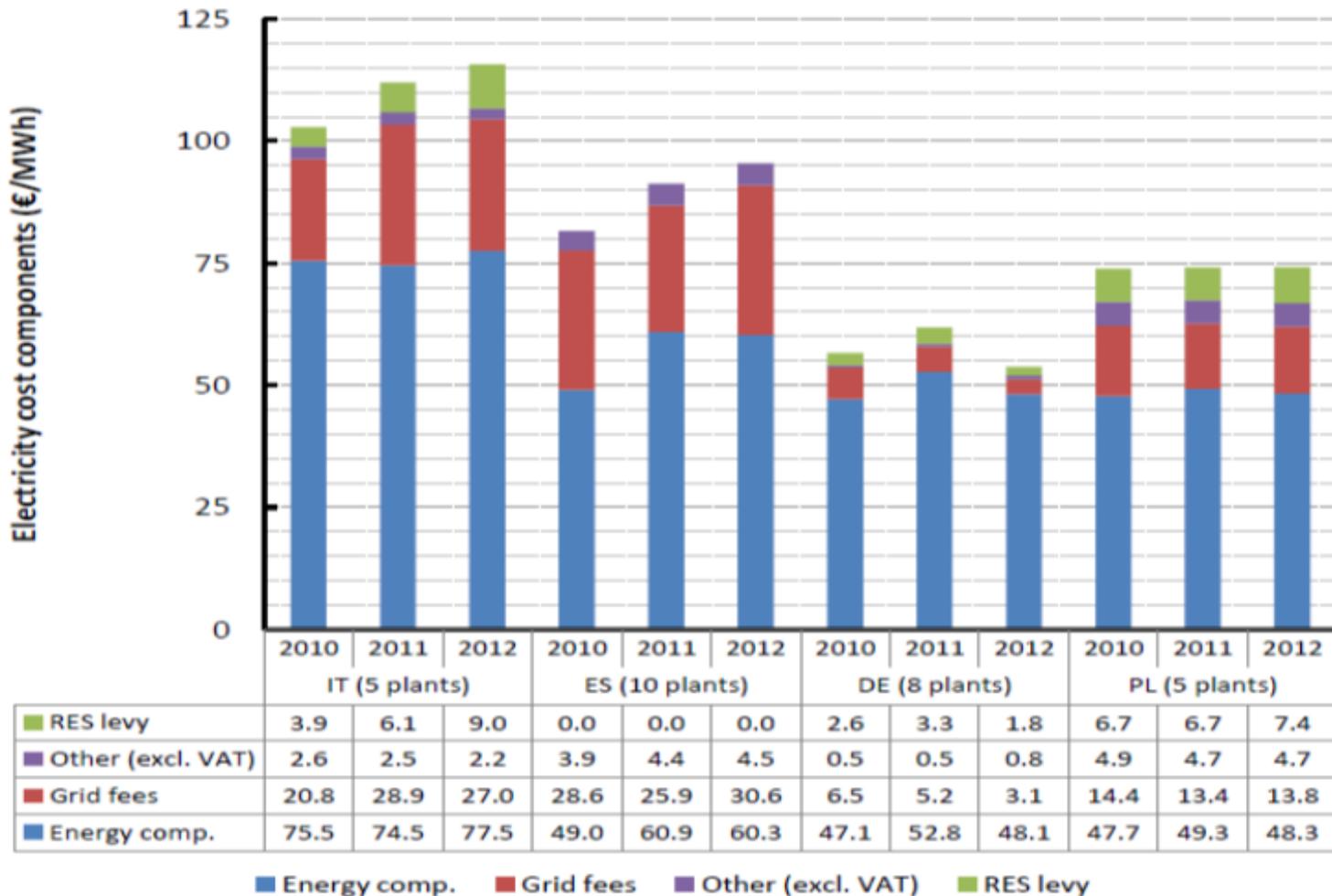


# I.M. driving home gas prices? forget it

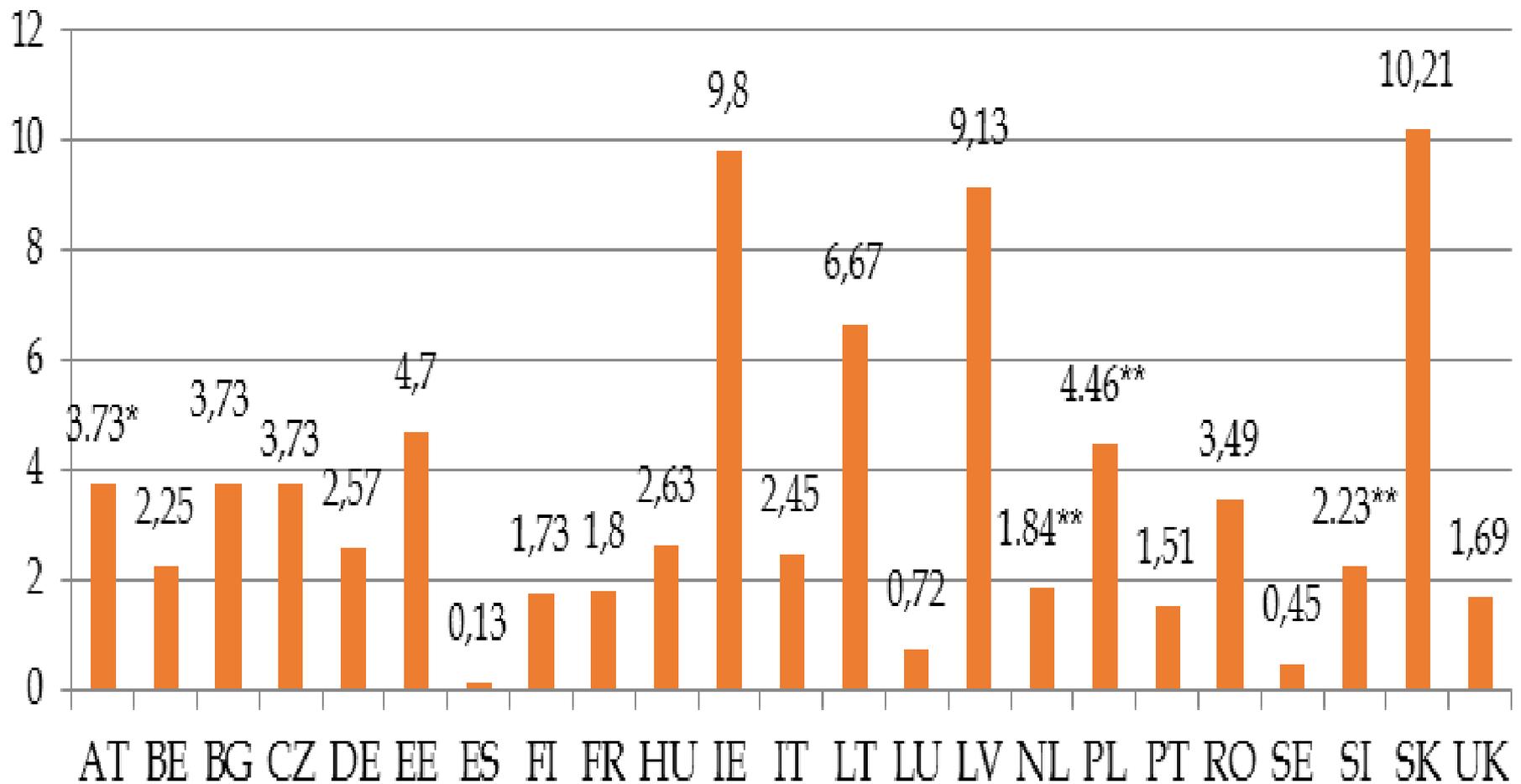


Source: ACEP retail database (December 2012)

# Electra prices for EN-INT firms: distortive national policies

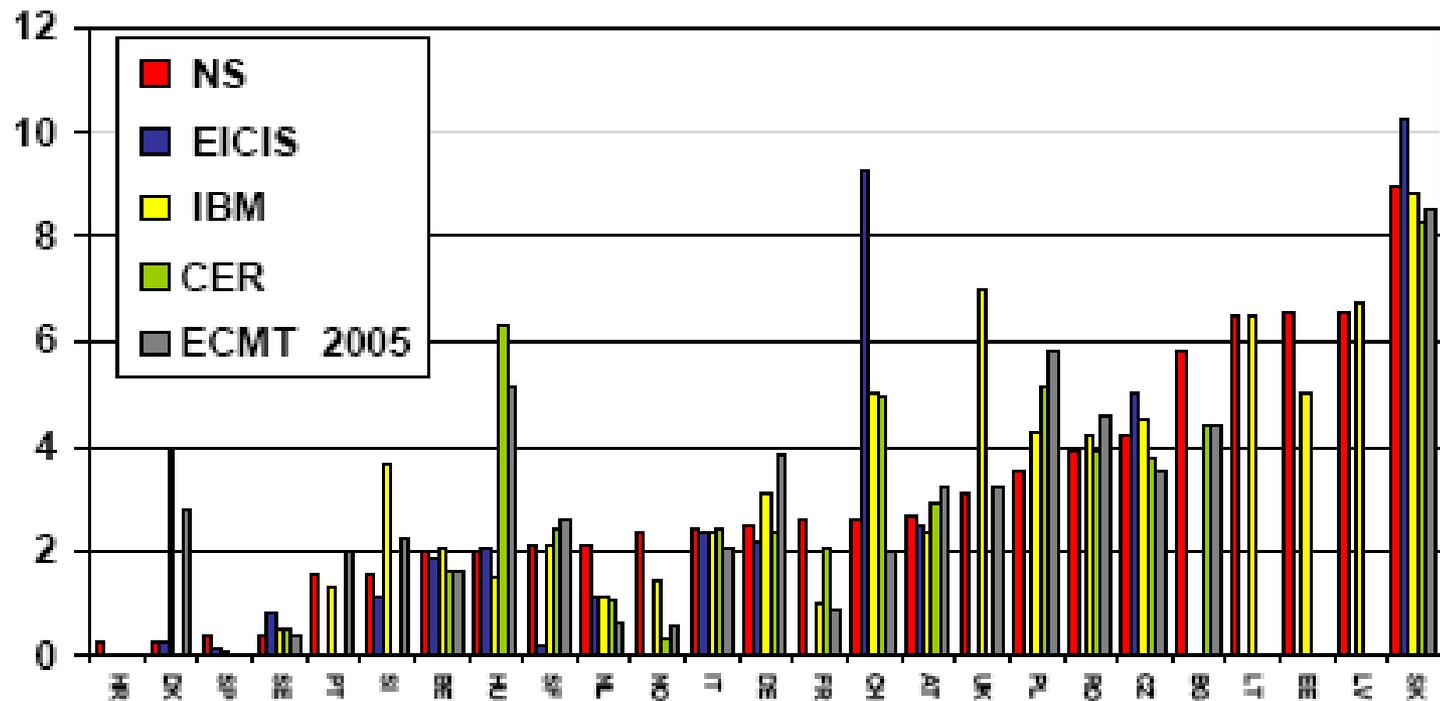


# Railtrack access charges, huge disparities (2010)



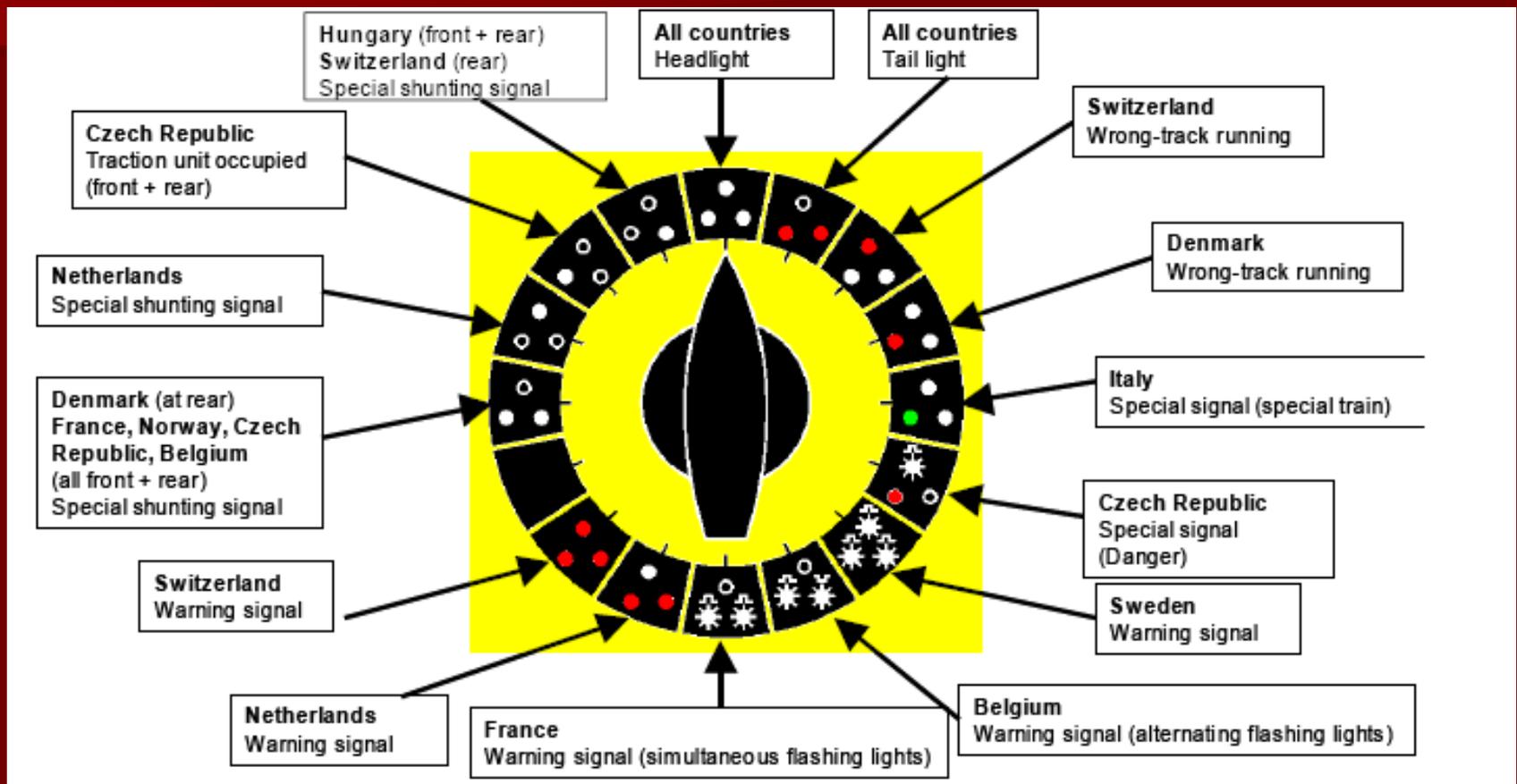
# Freight Access Charges

Euros/train-km, 960 Gross Tonne Train



Source: Table Eight Revised. Note: Poland (EICIS) and Lithuania (CER) outlying points removed

# 15 different Signal Light Combinations



Source: Improving cross acceptance of rolling stock, Problems, objectives and options; Farha Sheikh, "Railway Transport and Interoperability" Unit, European Commission

# Why no single NWI market (4)

- Political economy long weighted heavily
- First, plain political refusal (till late 1980s)
- Later, resistance from fearful labour unions and ideology – largely overcome
- [indeed, performance of NWI has massively improved since early 1990s]
- today, ambivalence caused by domestic political preferences and national NRAs

# Why no single NWI market (5)

- Institutionally, the Meroni doctrine was held to prevent the establishment of EU independent regulatory Agencies [EUIRA]
- Double ambivalence:
  - >>> all NWI markets of OECD countries have IRAs, but the single NWI has none !!
  - >>> worse, the 'single NWI market' has 28 NRAs w'out overriding I.M. mandate
- EU shooting itself in the foot

# Turning to the 'good news'

- Cross-border Infrastructure more recognized and with more funding
- Rail freight corridors (9) and long-run roadmaps multi-mode planning promising
- Linkages between single NWI market and related EU policies signal new drive:
  - >>> EU 'energy union' combines various policies with IM, plus urge for security
  - >>> EU eComms market as digital market, plus consolidation incentives

# EU mellowing on 'centralisation' ?

- Moving from networks of NRAs to EU quasi Agencies
- Upgrading EU safety Agencies
- Recurrent suggestions on genuine EUIRAs
- COM and EP much more firm on primacy of single market
- NEEDED: balanced proposals for EUIRAs together with reform of NRAs : too much?

# Mellowing Meroni

- Meroni is a non-delegation doctrine, unless a set of conditions is fulfilled (guarantees of legitimacy, transparency and judicial review)
- No 'wide margin of discretion' b/c that is up to the three EU bodies
- With Lisbon treaty conditions + logic of the 2014 ESMA case, Meroni has mellowed
- CJEU seeks 'balance' between protecting MS (via non-delegation) and a functional subsidiarity test to "improve the conditions for the establishment and functioning of the I.M. "

# Conclusions

- EU would benefit from a well-established & properly functioning single NWI market
- Be single-minded on IM, not 'two minds'
- Define a multi-level design with EUIRAs and NRAs in a coherent EU system, with I.M. focus
- With selective/proportionate infra powers, too
- Integrate pursuit of I.M with related EU policies
- Respecting Meroni where no trade-off
- Employ 'balance' where the case for EUIRAs has been made