

Summary of Commission Decision

of 17 March 2010

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union
and Article 54 of the EEA Agreement

(Case COMP/39.386 — Long Term Electricity Contracts France)

(notified under document C(2010) 1580)

(Only the French text is authentic)

(Text with EEA relevance)

(2010/C 133/05)

On 17 March 2010, the Commission adopted a decision relating to a proceeding under Article 102 of the TFEU. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the decision is available on the Competition Directorate General website at the following address:

<http://ec.europa.eu/competition/antitrust/cases/>

1. INTRODUCTION

- (1) The case concerns the EDF group. By the Decision, the commitments offered by EDF S.A. for the entire EDF group are rendered binding on EDF S.A. and the legal entities under its direct or indirect control, including its subsidiary Electricité de Strasbourg S.A. pursuant to Article 9 of Regulation (EC) No 1/2003.

2. CASE DESCRIPTION

- (2) On 18 July 2007, the Commission initiated proceedings against EDF pursuant to Article 2 of Regulation (EC) No 773/2004 with a view to adopting a decision pursuant to Chapter III of Regulation (EC) No 1/2003.

- (3) On 19 December 2008, the Commission sent a Statement of Objections as referred to in Article 27 of Regulation (EC) No 1/2003 and Article 10 of Regulation (EC) No 773/2004 which set out the Commission's competition concerns. According to the Statement of Objections, EDF as the dominant player in the market for the supply of electricity to large industrial customers was suspected by the Commission of abusing its dominant position within the meaning of Article 102 TFEU by:

- concluding supply contracts which, by virtue of their scope of application, duration and nature, significantly limit the possibilities of other undertakings to conclude contracts for the supply of electricity to large industrial customers in France as the main or secondary supplier,
- including restrictions on resale in its supply contracts with large industrial customers.

The Commission considered that these practices have had the effect of hindering the entry of alternative suppliers on

the French market and of decreasing the liquidity in the wholesale market, thereby delaying the effective liberalisation of the electricity market in France.

- (4) On 4 March 2009 (for Electricité de Strasbourg SA) and 9 March 2009 (for EDF SA), the addressees of the Statement of Objections, submitted their written observations on the Statement of Objections. On 2 April 2009, an oral hearing was held during which EDF as well as three interested third parties presented orally their views. EDF and five interested third parties also submitted written observations to the Commission.
- (5) On 14 October 2009, EDF submitted commitments pursuant to Article 9 of Regulation (EC) No 1/2003, to meet the Commission's competition concerns as addressed in the Statement of Objections.

In order to address the Commission's concern with regard to foreclosure EDF proposed that, on average, 65 % of the volumes contracted on the relevant market will be made available every year for recontracting by alternative suppliers throughout the period of the commitments. Moreover, EDF undertakes not to conclude new contracts with a duration exceeding five years. In its commercial proposals to those customers, EDF also undertakes to systematically offer at least a non-exclusive contract effectively allowing customers to source electricity volumes from another supplier. The commitment is offered for a period of 10 years unless EDF's market share drops below 40 % for two consecutive years.

In order to address the Commission's concern with regard to resale restrictions, EDF undertakes to abolish these restrictions, inform its clients that such restrictions in the contracts are null and void, and commits to assist its clients willing to resale electricity under certain conditions. This commitment is applicable for 10 years without a possibility of earlier termination.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

- (6) On 4 November 2009, a notice was published in the *Official Journal of the European Union* pursuant to Article 27(4) of Regulation (EC) No 1/2003, summarising the Commission's concerns and the proposed commitments and inviting third parties to give their observations on the commitments. Generally, the respondents welcomed the commitments and acknowledged that they were relevant and adequate to remedy competition concerns identified by the Commission. The observations did not provide grounds to question the quality of the commitments but allowed to improve their effectiveness.
- (7) On 10 and 14 December 2009, the Commission informed EDF of the observations received following the publication of the notice. On 26 January 2010, EDF submitted revised commitments, taking into account the responses to the market test.
- (8) In view of the concerns expressed in the Commission's Statement of Objections, EDF's arguments submitted in its response and the public consultation undertaken in accordance with Article 27(4), of Regulation (EC) No 1/2003, the Commission considers that EDF's commitments, as modified, are suitable and necessary to solve the competition problems identified by the Commission on the French market of electricity supply to the large industrial customers, without being disproportionate.
- The final commitments of EDF allow in a proportional manner to bring the foreclosure of the French market for electricity supply to the large industrial customers in France to an end and, thus, guarantee a real possibility for customers to obtain supplies from alternative suppliers and, for the latter, a real opportunity to enter or expand on the market. Moreover, the commitments, by abolishing any restriction on the resale of the electricity supplied by EDF, or even by facilitating such a resale under certain conditions, will enable the customers concerned to manage more easily and with more flexibility their electricity supplies, and could, in the long run reinforce the liquidity of the French wholesale market.
- (9) In the light of these final commitments, there are no longer grounds for action by the Commission and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003; the proceedings in this case should therefore be brought to an end. The decision shall be binding until 1 January 2020.
- (10) On 1 March 2010, the Advisory Committee on Restrictive Practices and Dominant Positions was consulted and it issued a favourable opinion. On 3 March 2010 the Hearing Officer submitted its final report.
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