



Reports of Cases

Case C-551/12 P(R)

Électricité de France SA (EDF) The other party to the proceedings being: European Commission

(Appeal — Application for interim measures — Concentrations — European electricity market — Acquisition of control of Segebel SA by EDF — Decision declaring the concentration compatible with the common market, subject to compliance with the commitments given by EDF — Refusal by the Commission to grant EDF postponement of the deadline for compliance with some of those commitments — Concepts of urgency and of serious and irreparable harm)

Summary — Order of the Vice-President of the Court, 7 March 2013

1. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Serious and irreparable damage — Cumulative nature — Balancing of all the interests involved — Order of examination and method of verification — Discretion of the judge dealing with the application for interim relief*

(Arts 278 TFEU and 279 TFEU; Rules of Procedure of the Court of Justice, Art. 160(3)) Rules of Procedure of the General Court, Art. 104(2))

2. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable damage — Financial harm — Seriousness of the harm — Assessment with regard only to the size of the undertaking concerned — Unlawful*

(Arts 278 TFEU and 279 TFEU)

3. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Urgency — Serious and irreparable harm — Burden of proof — Financial harm — Whether the harm materialises dependent on uncertain future events — No certain harm*

(Art. 278 TFEU and 279 TFEU; Rules of Procedure of the General Court, Art. 104(2))

4. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable damage — Irreparable nature of the harm — Financial harm — Situation which could imperil the existence of the applicant company — Assessment having regard to the situation of the group to which the applicant company belongs*

(Arts 278 TFEU and 279 TFEU)

5. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable damage — Financial harm which cannot be wholly recovered — Burden of proof*

(Arts 278 TFEU and 279 TFEU)

1. See the text of the decision.

(see paras 21-25)

2. When assessing the seriousness of the alleged financial harm in the context of an application for interim measures, the fact that the appellant failed to provide information concerning the size of the undertaking to which it belongs is not in itself sufficient to justify rejection of that application on the ground that the appellant failed to establish the seriousness of the alleged harm.

Admittedly, the size of the undertaking may have an influence on the assessment of the seriousness of that financial harm, since that harm will be all the more serious where it is significant compared to the undertaking's size and correspondingly less serious if the contrary applies. Thus, in certain circumstances, the arguments concerning the seriousness of the harm alleged may be rejected by simply comparing it to the turnover of the undertaking which may suffer that harm.

However, it cannot be excluded that financial harm which is objectively significant and which allegedly results from the obligation to make a final commercial choice of some magnitude within a disadvantageous time-scale could be considered as 'serious', or even that the seriousness of such harm could be considered as obvious, even in the absence of information concerning the size of the undertaking concerned.

(see paras 31-33)

3. See the text of the decision.

(see paras 39-41, 48)

4. Where the harm referred to in an application for interim measures is of a financial nature, the interim measures sought are justified where, in the absence of those measures, the applicant would be in a position that would imperil its financial viability before final judgment is given in the main action, or where its market share would be affected substantially in the light, inter alia, of the size and turnover of its undertaking and the characteristics of the group to which it belongs.

In that regard, where there is a situation that could imperil the financial viability of an undertaking, in the context of an assessment of the irreparable nature of the harm allegedly resulting from losses which may be made in the context of an investment, it is relevant to compare the global turnover of the group to which it belongs and the cost of that investment.

(see paras 54, 58)

5. Harm of a financial nature is considered to be irreparable if it cannot be wholly recovered, which may in particular be the case if the harm, even when it occurs, cannot be quantified. It is for the applicant to present precise and convincing arguments and evidence in that regard in its application for interim measures.

(see paras 60, 61)