28 June 2007: Market for electricity supply / complaint by Direct Energie

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The Conseil de la concurrence orders EDF to market base-load electricity to alternative suppliers in order to allow them to effectively compete with the incumbent operator's retail sales on the free market
EDF declares considering submitting commitments

Version française

Following a complaint by Direct Energie filed on 22 February 2007, concerning practices implemented by Electricité de France (hereafter EDF) on the market for electricity supplies, the Conseil de la concurrence adopts interim measures against EDF, before reaching its decision on the merits. However EDF will be able to implement the decision's main injunction by submitting commitments within a short period, as it suggested during the hearing held before the Conseil de la concurrence.

Direct Energie's complaint: margin squeeze on the retail supply market for small professionals

Direct Energie, a retail electricity supplier without production capacity, sources its requirements on the wholesale market. In 2005 the company signed a five year electricity supply contract with EDF at a fixed price, thus securing guaranteed volumes until 2010. However Direct Energie, which competes with the incumbent's “EDF Pro”, a product offered at a price aligned with regulated tariffs (so-called “Blue tariffs”), is unable to market viable commercial products to small professionals given its contractual wholesale price.

Direct Energie's complaint alleged the existence of an abuse consisting in a margin squeeze between EDF's wholesale and retail prices, thus impeding on EDF's competitor's ability to offer profitable retail supplies, in situations where these competitors do not have base-load production capacity. Direct Energie also alleges that EDF sells its competitors base-load electricity, which is mainly generated by nuclear power plants, at a price higher than the “internal price”, which EDF allegedly reserves for its own customers.

The Conseil de la concurrence considered that, on the eve of the opening of the whole market on 1 July, interim measures were required to improve conditions for wholesale electricity supplies and thus allowing for effective competition on retail markets

The Conseil de la concurrence noted that the maximum duration for electricity wholesale products amounted to three years. Conditions on the wholesale market do not allow alternative suppliers to foresee wholesale price changes and available quantities, in a manner sufficient to design alternative retail products and attract clients in competition with EDF, given in particular the existence and the current level of regulated tariffs.

The Conseil considered that the price indicated in the contract between EDF and Direct Energie for electricity supplies did not enable the latter to compete with EDF Pro prices without incurring losses, a situation which may be qualified as a margin squeeze and may constitute an abuse of EDF's dominant position.

More generally, the Conseil observed a shortage of wholesale base-load electricity supplies, which may hinder the activity of alternative suppliers on retail markets. This fact should, in addition, be considered in light of the 1 July 2007 deadline, which will mark the opening of the whole electricity market. The situation is thus urgent since, as of 1 July, all electricity consumers will have access to the free market.

The interim measures and EDF's commitment proposal

Although EDF does not consider being responsible for the sector's current

shortcomings, EDF indicated during the hearing that it was willing to submit commitments consisting in marketing base-load nuclear energy, on the long term, in order to allow alternative suppliers to source their requirements.

The Conseil did not exclude this proposal, but considered it necessary to provide for an urgent remedy to the serious and immediate impact sustained by both Direct Energie and the sector, and ordered EDF to submit, within two months, “a proposal for electricity wholesale supplies or any other technically or economically equivalent solution enabling alternative suppliers to compete effectively with EDF's retail offers to electricity consumers on the free market, without sustaining any margin squeeze”.

In the meantime and before the implementation of such a proposal, the Conseil de la concurrence also ordered EDF to enter into good faith negotiations with Direct Energy in order to conclude a provisional wholesale supply contract which, as proposed by EDF during the hearing, would include at least a duration of one year and a price reflecting total production costs.

Finally, the Conseil indicated that, in accordance with the proposal made during the hearing, should EDF wish to submit commitments implementing the injunction, EDF should do so before 14 July 2007. The proposal, which will have to guarantee that the wholesale product is offered on the basis of objective, transparent and non-discriminatory conditions, will be submitted to a market test following its publication on the Conseil de la concurrence's website, designed to collect observations from interested third parties within one month.