9th April 2009: Solar electricity

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The *Autorité de la concurrence* orders EDF to modify its business communication in such a way as to separate the part relating to its public service activities from that of its subsidiaries involved in the competitive sector

> Version française

Referred to by the Solaire Direct company, active in the emerging market for the provision of services to individuals wishing to produce photovoltaic solar electricity, against the practices implemented by EDF and its subsidiary EDF ENR, the *Autorité de la concurrence* pronounces interim measures before reaching its decision on the merits.

Solaire Direct's complaint and the *Autorité*'s competitive analysis

In its complaint, Solaire Direct reproaches EDF for the excessive use of the dominant position that it holds as the incumbent operator in the markets for the production, distribution and supply of electricity, in order to penetrate the emerging global services market targeting the production of photovoltaic electricity, in which its subsidiary EDF ENR is operating.

At this stage of the investigation, the *Autorité* considers that the means of communication used by EDF to all its subscribers – in particular the *Lettre Bleu Ciel* and the 3939 telephone platform which directs people interested in the production of photovoltaic electricity to its subsidiary EDF ENR – create confusion between, on the one hand, the role of EDF as a supplier of electricity at regulated tariffs and on the other hand, the competitive activity of its subsidiary.

Hence, EDF ENR benefits from the image of the incumbent operator and uses the database held by its mother company about the regulated clients, advantages which its competitors do not have. In a fast-growing emerging market, such practices may have a formative effect and are a serious and immediate impediment to fair competition thus justifying emergency measures.

The interim measures that have been pronounced aim at putting an end to this confusion, by no longer allowing EDF ENR to have access to the EDF client database

The Autorité does call into question the possibility for a public company to diversify its activities by making offers in competitive markets. But this possibility must be exercised on equal terms with the other players, in particular in the field of commercial communication.

Thus it orders EDF:

- to delete in all the EDF Bleu Ciel **brand communication media** (Lettre Bleu Ciel, EDF electricity supply invoice, advertisements...) any reference to the EDF ENR activity in the photovoltaic solar industry

- to stop any reference being made by the staff answering the **3929** number to the services offered by EDF-ENR;

- to put an end to any communication to EDF - ENR of the information collected by the **3929** service. This injunction targets the setting of appointments and also the transmission of information about those interested in the production of photovoltaic energy.

- to no longer make available to EDF - ENR information held by EDF deriving from its activities as a supplier of electricity services at regulated retail tariffs.
  EDF must comply with these injunctions within a period of one month.