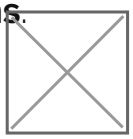
27 May 2010: Government bill on the new organisation of the electricity market (NOEM)

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**The Autorité de la concurrence considers that the regulation of electricity production is necessary
for the development of competition within the national market**

**However, it points out that any such regulation must be temporary in nature, and from the outset,
it must organise a progressive return to normal market conditions.**



> Version française

The Economic affairs committee of the French National Assembly (Assemblée nationale) referred to the Autorité de la concurrence on 14 April 2010 for an opinion on the government bill establishing the new organisation of the electricity market ("NOEM"). This text is in keeping with the context of the opening of the European electricity markets to competition, as established by successive Community directives in 1996, 2003 and 2009, transposed into national law by law 2000-108 of 10 February 2000 and its subsequent modifications.

It establishes a right for alternative suppliers to access the basic electricity of nuclear origin produced by EDF, up to a total volume limit of 120 TWh per year and at a price set by the regulator, for 15 years.

The objective is to correct the effect on the electricity market resulting from the incumbent operator's ownership of all operating nuclear plants, which provides it with a competitive advantage in terms of the production cost.

The Autorité de la concurrence considers that this measure would be useful,

but that the regulation must be temporary.

The Autorité de la concurrence considers that the regulated access mechanism is useful since it neutralizes EDF's historical advantage relative to basic electricity, while allowing competition to exist between operators relative to other components of the supply of electricity to the end consumer, such as peak electricity and sales-related services, for which EDF does not have uneven comparative advantages.

However, the Autorité stresses that the regulated access mechanism results in a deviation from the normal operating conditions of a competitive market, for a substantial part of this market and for a very long time. The adopted volume for the quantity of regulated electricity and its evolution during the regulation period must therefore allow for the lasting establishment within the market of suppliers that are able to provide a true alternative to EDF. Failing that, the mechanism would lose its justification.

The government bill must consequently anticipate provisions that will lead to a progressive withdrawal of the regulation, in order to organise the return to normal market conditions relative to the procurements for alternative suppliers.

The Autorité de la concurrence makes the following recommendations relative to the provisions for the regulated access to basic electricity of nuclear origin:

• Regarding the **overall volume** of regulated electricity accessible to alternative suppliers, the law should include, from the outset, a progressive reduction of the 120 TWh ceiling over a period of 15 years. The objective would be to progressively prepare suppliers for the 31 December 2025 deadline, at which point they would no longer be able to obtain electricity under price and volume conditions that are not market-driven.

• The annual allocation of regulated electricity will result in **information exchanges between each supplier applying for ARB and EDF, with a true risk of a consensus emerging** amongst the companies with regard to their commercial strategies and even their price policies, which would be in violation

of competition rules. In this context, the Autorité recommends that the annual ARB contracts should mention the quantitative information needed for their execution, in a manner which is as aggregated and anonymous as possible. EDF must not be provided with the consumption curves of the alternative supplier's customers or categories of customers.

• **The price calculation rules for the regulated electricity must be clear and foreseeable for the entire duration of the ARB**, if necessary by immediately distinguishing the existence of several periods with differing calculation rules, within the total 15 year framework. This visibility of the rules would appear to be indispensable for suppliers in the start-up phase of their activities, as they must be encouraged to invest in their own production means in order to be able to compete with EDF on an even footing.

• **The price supplement mechanism is indispensable to the success of the reform**. Its objective is to develop competition between suppliers on the level of sales to the end consumer, by establishing similar procurement conditions. Should a supplier that resells regulated electricity on the wholesale market generate an unjustified profit, it is appropriate that this supplier would then have to pay GDF the difference between the market price and the regulated price. However, the government bill does not stipulate the payment frequency for the owed price supplements, whether a payment with each transaction or on the basis of a weekly, monthly or quarterly average.

• **The continuation of regulated rates for electricity sales for individuals and small professionals must be accompanied by clear rules for setting these prices**, that will ensure that all of the costs corresponding with this supply are taken into account. The Autorité can only recommend a reduction of the duration of the transition period covered by the government bill, or failing that, progressively bringing closer together the level of the regulated rates of the costs borne by suppliers between now and the 31 December 2015 deadline.

• **Finally, it is necessary for the initiated reform to draw a link between the regulated access to basic electricity and the encouragement of suppliers to invest in electricity production capacities, both basic and during peak times**. Failing that, the risk would be a return to the current situation 15 years from now,

meaning that the alternative suppliers would have to turn to EDF for their electricity supplies before reselling to the end consumer. The mechanism using production capacity certificates as proposed by the government bill is along these lines.

However, the innovative nature of this mechanism and the complexity of its application must be emphasized. For this reason, and also to encourage alternative suppliers to invest in basic production means, the Autorité reiterates its proposal that, over the 15 years of the ARB mechanism, there should be a progressive and staggered decline of the overall volume of regulated basic electricity as established by the government bill.

> For more details, consult the full text of the opinion 10-A-08 relative to the new organisation of the electricity market (NOEM)