

# 26 July 2012: Electricity Market

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**The Autorité de la concurrence has issued reservations concerning the arrangements proposed by RTE in relation to the participation of certain operators in the electricity Balancing Mechanism**

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**> *version française***



The French energy regulatory commission (*Commission de Régulation de l'Energie - CRE*) sought an opinion from the Autorité de la concurrence regarding the conformity with competition law of the draft guidelines produced by RTE to govern the participation of distributed load-shedding operators in the electricity Balancing Mechanism.

These draft guidelines are due to be approved by CRE in the near future, prior to implementation.

**A key feature of the electricity market is that supply and demand must remain balanced at all times**

Constraints inherent to the power generation and transmission sector require electricity supply to be matched with demand. Maintaining this balance is essential. Imbalances caused by a spike in consumption or a power plant outage, for example, may result in disruption to power supplies to consumers (load shedding), or even, in the event of a severe imbalance, the partial or total collapse of the electricity system (black-out).

The mission of the grid operator, RTE, is to ensure that this balance is maintained.

It has a number of levers at its disposal to achieve this goal, including the Balancing Mechanism and Balance Responsible Entities.

## **The Balancing Mechanism and Balance Responsible Entities help to restore the balance between power generation and consumption**

- Balancing Mechanism

In the event of a mismatch between total electricity supply and demand, RTE is able to purchase balancing offers proposed by electricity producers (EDF, GDF Suez, Poweo, etc.) as well as business and private consumers.

For example, in the event that electricity demand exceeds the available global supply, RTE may, in exchange for financial compensation, ask such “Balancing Actors” to increase their power generation output or reduce their consumption (via load shedding offers) in order to restore the global balance between supply and demand.

- Balance Responsible Entities

Balance Responsible Entities are operators that make a commitment to RTE to balance, within their respective Balancing Perimeter<sup>1</sup>, the amounts of electricity injected into the grid and drawn from it. In most cases, the role of Balance Responsible Entity is fulfilled by electricity producers.

A Balance Responsible Entity experiencing a deficit within its Balancing Perimeter (i.e. if more power is being consumed than injected) is required to pay RTE a financial penalty. This mechanism provides an incentive to Balance Responsible Entities to accurately predict their respective supplies, thereby helping to keep the electricity system reliable. It also enables RTE to pass on the cost of requesting action from Balancing Actors to those responsible for the imbalances.

## **The mechanism proposed by CRE potentially infringes competition law**

Under the terms of the procedure being considered by RTE, distributed load-shedding operators, which reduce consumption by domestic consumers in exchange for payments from RTE, would be required to obtain approval from the Balance Responsible Entities before being able to participate in the Balancing Mechanism.

There is however, by design, only one Balance Responsible Entity for any given Balancing Perimeter, effectively resulting in a monopoly and, furthermore, the role of Balance Responsible Entity is generally performed by an electricity producer.

As a result, a Balance Responsible Entity and a load-shedding operator may find themselves competing to provide RTE with balancing offers to balance supply and demand in the electricity system.

- In the event that demand exceeds the total available supply, RTE will be able to choose to readjust the power injected to and drawn from the grid either by asking electricity producers to increase production, or by asking load-shedding operators to decrease consumption. There is therefore competition between the respective offers of the two types of partner.

- It may therefore be in the interest of a Balance Responsible Entity to reject applications for prior approval from load-shedding operators, in order to prevent subsequent competition with them on the balancing market.

- Lastly, a Balance Responsible Entity may decline to approve a load-shedding operator out of fear that the latter's activity might reduce consumption by its own customers, and hence its revenues.

From a legal perspective, EU case-law has on several occasions established that government measures authorising a private company to issue operating licenses to competing operators may contravene EU law, if such measures are not accompanied by limitations, obligations or inspections designed to ensure fair competition between the various operators.

In the light of the above, the proposed approval scheme appears to present certain difficulties in terms of competition law compliance. Consequently, the Autorité de la concurrence recommends CRE not to approve it in its current form.

<sup>1</sup> *A Balance Responsible Entity's Balancing Perimeter covers all power generating and consuming sites under its management.*

**> Full text of Opinion N° 12-A-19 relating to consumption load-shedding in the electricity sector**

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