9 September 2014: Gas Market

Published on September 10, 2014

**The Autorité de la concurrence orders GDF Suez to grant its competitors access
to some of the data in its historic file.**

**This access will enable competitors of GDF Suez to compete with the incumbent operator
on an equal footing by enabling them to let customers better know about the competitive offers they are currently marketing.**

This will enable consumers to reduce their gas bills, especially as winter approaches.



> Version française

Summary

Following a referral by Direct Energie, the Autorité de la concurrence issues urgent interim measures[1]. It orders GDF Suez to disclose parts of its database relating to consumers with regulated gas tariffs.

This access must occur at the latest by 3 November 2014 for customers with company status, and by 15 December 2014 for individual customers.

This decision does not deal with the issue of access to electricity database, but it should be pointed out that EDF has expressed itself to be open to the principle of disclosing its own customer database, which appear to be richer than GDF Suez' one relating to electricity supply.

Context: new entrants into the market

Since 1 July 2007, French gas customers have the option of taking advantage of competition by leaving the incumbent operator (GDF Suez) and opting for gas supply offers made by new suppliers who are now in competition with GDF Suez.

Almost everywhere in France, consumers currently have the choice between two types of offers:

- offers at regulated tariffs, which are only offered by GDF Suez. The prices of these offers are regulated by the administration. The marketing of these offers is considered to be a public service activity.

- so-called 'market' offers, proposed by all suppliers (including GDF Suez and EDF). The price of these offers is freely fixed by the operators.

More than seven years after the complete opening up of the market to competition, the development of these new gas suppliers has been extremely limited as on 31 December 2013, their market share[2] varies between 5% for individuals and 13% for industrial and commercial customers.

As the Autorité already noted in its opinion 13-A-09 concerning regulated tariffs for the sale of gas (see the press release), the weak development of new entrants may be a competitive disadvantage for the French economy and erodes consumers purchasing power because the new suppliers can sometimes offer very competitive gas offers in comparison with those of GDF Suez (up to 15% less than GDF Suez's regulated tariffs).

Direct Energie's complaint

In April 2014, Direct Energie (one of the new suppliers that emerged when the market was opened up to competition) complained that GDF Suez was implementing practices in order to drive the new competitors out of the market.

Among the practices reported, Direct Energie mentioned in particular that GDF

Suez used the database of customers on regulated tariff to offer them deals on gas and electricity, thus giving it an incomparable advantage for maintaining its position on the gas market and acquiring new customers on the electricity market. Direct Energie also accused GDF Suez of causing confusion when selling offers at regulated and 'market' tariffs, of linking abusively its dual gas and electricity offers and of disparaging its competitors.

The historical database and the marketing resources inherited from GDF's former monopoly status are necessary tools for the new entrants to develop

At the present stage of the investigation, GDF Suez might have abused its dominant position in the gas market by using the infrastructure dedicated to regulated tariffs (i.e. customer database, website, customer platform...), which is in the realm of a public service activity, to market its gas and electricity offers, which are marketed in a competitive market (see paragraphs 138 and ff. of the decision). This behaviour may well have caused confusion in consumers minds, preventing them from making rational choices concerning their gas and electricity supply.

The advantages gained through this behaviour cannot be replicated under reasonable conditions, since no database exists that would allow competitors to precisely locate gas consumers and know their consumption level, in order to propose them offers that are better suited to their profile. The use, by GDF Suez, of the regulated tariff database to market its competitive offers is also incompatible with competition on the merits, because it is not the product of a specific innovation that GDF Suez may have introduced, but is merely inherited from its former status as monopolistic gas supplier.

Interim emergency measures as winter approaches and straight before the abolition of regulated tariffs for non-residential customers

The weight of energy spending that strain household budgets (the average domestic energy supply for a user stood at 1600 euros in 2010) and the constant increase of "fuel poverty" situations indicates that customers must urgently be made aware of the most competitive offers.

Yet, according to the CRE (French Energy Regulator), since 2013, GDF Suez has clearly intensified the marketing of its competitive gas offers towards customers with regulated tariffs, especially by using the business methods described above. Documents are showing that this strategy of rapid conversion of customers with regulated tariffs into those who pay market prices is apart of the company's marketing strategy for coming years.

This means that there is a high risk of pre-emption of the market, that would be a consequence of the removing of the most competitive offers which might reduce consumers' bills, especially those of the most vulnerable users. As the heating season approaches, the issue becomes more urgent.

Furthermore, the removal of the regulated gas tariffs for small industrial and professional[3] customers whose annual consumption is higher than 30 MWh (representing 162,000 businesses or workshops) also highlights the urgency of an intervention, because these consumers will be forced to choose a market offer from the end of the year or, at the latest by the end of 2015, depending on how much gas they use.

Disclosing client information

The data that have to be disclosed are those that are strictly necessary to ensure effective competition among suppliers, i.e. the customer name and address and the technical characteristics of his consumption[4]. This is in line with the CRE's recommendations in an opinion issued to the Autorité.

Access should be granted at the latest the 3 November 2014 for customers who are companies and 15 December 2014 for customers who are individuals, in order to preserve individuals the right to oppose the transmission of their personal data.

If GDF Suez does not comply with these deadlines, it will be required to stop marketing its market offers until access to the data is fully available to competitors.

[1] The decision on the substance of the case will be issued later.
[2] Taking all types of offers together and excluding EDF.
[3] Consumer Law of 17 March 2014.
[4] The data in question are known as the “point de comptage and d’estimation” [metering and estimating point] (PCE), “consommations annuelles de référence” (CAR) [annual reference consumption], consumption profiles, surnames and first names of customers, billing addresses and landline telephone numbers

> Consult the entire text of decision 14-MC-02 of 9 September 2014 relative to a request for interim measures submitted by Direct Energie in the gas and electricity sectors

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> See decision of the Paris court of appeal (31 October 2014)

> This Judgment was appealed before the Court of cassation (Supreme Court of Appeal)