Gas supply: the Autorité de la concurrence hands out fines worth one million euro to Gaz de Bordeaux and its parent companies for abusing the resources at its disposal as a public service to develop its competitive activity

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Background

Referred to by the French Energy sectoral regulator, the *Autorité de la concurrence* has fined Gaz de Bordeaux for the fact that, between 2017 and 2019, it abused its dominant position in the sector of natural gas supply to residential and small non-residential customers in Bordeaux and the surrounding towns.

Gaz de Bordeaux is accused of having abused its infrastructures and the commercial resources linked to its public service activity, in its capacity as a supplier of natural gas at the regulated sales tariff (RST), to develop its market offers (MO).

Although it was obliged to continue marketing its regulated tariff offer, Gaz de Bordeaux withdrew this offer from its potential customers, systematically promoting its market offers, both on its website and through its telephone helpline. By artificially leading almost all its new customers to subscribe to a market offer, Gaz de Bordeaux reduced competition at a key moment in the opening up of the market to competition (disappearance of the regulated gas tariff).

The *Autorité* jointly and severally imposed a financial penalty of one million euros on Gaz de Bordeaux and its parent companies (Régaz-Bordeaux and Bordeaux Métropole Energies) and required Gaz de Bordeaux to publish a summary of this decision on its website for three months.

The gradual opening up of the natural gas supply business to competition

All consumers in France, including (private) residential customers, have been eligible for market offers since 2007. Concurrent with this opening up to competition, the French Government has maintained the existence of regulated sales tariffs (RST).

The opening up to competition, combined with the maintenance of the RST, allowed consumers to freely choose their supplier and select between:

- a regulated sales tariff contract, which was only offered by the incumbent suppliers, including Engie in most of France and Gaz de Bordeaux in the Bordeaux service area;
- a market offer contract, which is offered by both the incumbent operators and the new natural gas suppliers.

In 2014, the Government established a timetable to phase out regulated sales tariffs. Recently, the Energy-Climate Law confirmed the end of the natural gas RST for small non-residential sites and for all residential consumers. In application of these provisions, the RST offer was abolished in December 2019 (impossible to subscribe to a new RST offer from this date), while customers who subscribed to an RST offer before this date have until 31 July 2023 (for residential customers) to subscribe to a new market offer with the supplier of their choice.

Gaz de Bordeaux's market position

Formerly a monopoly before the opening up to competition, Gaz de Bordeaux is the incumbent retail natural gas supply operator for the city of Bordeaux and 45 surrounding towns in the Gironde département and is considered a local distribution company (LDC). As the incumbent operator in this area, Gaz de Bordeaux has a monopoly on the marketing of gas supply offers at the RST by virtue of a public service mission, and can at the same time market MOs in

competition with alternative operators.

Despite the opening up to competition, the *Autorité* found that from 2016 to 2019, Gaz de Bordeaux's market share in the Bordeaux region was over 98%, giving it a quasi-monopoly in the Régaz-Bordeaux area (geographical area covered by the public service activity).

More generally, the *Autorité* noted that the territories of the LDCs are lagging further behind the rest of France in terms of opening up to competition.

The alleged practice

During the three years preceding the end of the RST, Gaz de Bordeaux used the technical and human resources resulting from its public service activity to systematically direct consumers towards market offers, deliberately not disclosing the existence of the RST offer.

As an example, the RST offer gradually disappeared from the Gaz de Bordeaux website. The RST offer was demoted to the bottom of the page in 2017, and from 2019 was no longer available on the Gaz de Bordeaux website. At the same time, Gaz de Bordeaux's sales teams concealed its existence, thus leading almost all new customers to subscribe to market offers[1].

Therefore, by using the resources allocated by its public service activity, Gaz de Bordeaux created confusion between its public service activity and its competitive activity in a sector in which consumers were not well informed, and thus distorted the competitive functioning of the market.

By redirecting consumers to market offers[2], Gaz de Bordeaux also prevented many consumers from receiving clear information on the liberalisation of the gas market when the RSTs ended. Indeed, while the incumbent natural gas operators offering contracts at the RST were required to inform consumers by sending five regulatory letters informing them that the market was opening up to competition, this obligation did not exist for subscriptions to market offer contracts. Consumers guided by Gaz de Bordeaux towards MO contracts during

the infringement period were therefore unable to receive the legal information and were deprived of the possibility of choosing an MO contract in a free and informed manner.

The sanctions imposed

In view of all these elements, the *Autorité de la concurrence* imposes on Gaz de Bordeaux, jointly and severally with its parent companies, a fine of one million euros.

The *Autorité* also orders Gaz de Bordeaux to publish a summary of this decision on its website for three months.

[1] The Autorité noted that 97% of new subscriptions between 1 January 2017 and 30 November 2019 involved MOs (compared to 0.10% in 2016).

[2] In its referral, the French Energy Regulatory Commission noted that "on the residential market in Régaz's service area, more than 16% of Gaz de Bordeaux's customers, previously on regulated sales tariffs, migrated to a Gaz de Bordeaux market offer between January 2017 and March 2018. During this period, approximately 2,000 customers per month subscribed to Gaz de Bordeaux's market offer. After March 2018, the movement was consistent over this period, at an identical pace."

DECISION 22-D-17 OF 11 OCTOBER 2022

regarding practices implemented by Gaz de Bordeaux company in the gas sector.

See full text of the decision (in French)

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