The Autorité issues an opinion on electricity consumption demand response market

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The Autorité de la concurrence, whose opinion was sought in relation to a draft decree, has found that subsidisation of demand response operators' activity by electricity consumers must be strictly limited and proportionate to actual demonstrated benefits obtained.

It has also made several recommendations aimed at guaranteeing that all demand response operators are given a fair opportunity to develop on the market.

Following a referral by the government with regard to a draft decree on electricity consumption demand response, the Autorité has today made public an opinion in which it expresses its reservations with regard to the methods chosen to establish public subsidisation of demand response operators' activity which would increase, beyond what is necessary, the bills of French electricity consumers as a whole.

The Autorité has also recommended that activity on the electricity consumption demand response market should be regulated such that genuine competition can emerge. Such regulation consists in particular of making available to all demand response operators some of the data held by EDF on its registered customers and establishing the incompatibility between the role of system operator and demand response operator activity.

The framework: development of electricity consumption demand response

Consumption demand response can be defined as action aimed at reducing over a short duration, in response to ad hoc requests from a “demand response operator”, the electricity consumption level of certain willing clients. This mechanism makes it possible to reduce demand during peak periods, thus reducing the substantial investment necessary to deal with such spikes in consumption.

Among the technical procedures at its disposal, a demand response operator may, for example, install a box in the consumer’s premises linked both to an electricity meter and various energy-inefficient appliances (electrical convection heaters, electric water heaters). During demand response periods, the demand response operator will remotely suspend the consumption of these appliances.

Consumption demand response is likely to generate an energy saving or a postponement in consumption. The demand response operator can then sell these energy savings on certain markets, such as the wholesale electricity market, thus making a financial gain. Electricity consumption demand response has shown particularly strong development within the framework of the “smart grids” growth and the management of electricity consumption using information and communication technology.

In order to foster the development of demand response activity in the private electricity consumption sector, the draft decree, in accordance with the terms of the law, is planning to establish a premium that would be paid to demand response operators depending on the volume of demand response achieved. The premium is aimed at encouraging the development of demand response

bearing in mind its expected benefits to the community, in the form of managing energy demand and reducing greenhouse gas emissions.

This premium would be financed by the contribution paid by consumers under the *contribution au service public de l'électricité* [Contribution to the Public Electricity Service] (CSPE). The CSPE, a tax paid by all electricity consumers in proportion to the volume of electricity consumed, already finances in particular renewable energy and social electricity tariffs.

The Autorité is of the opinion that the effectiveness of this subsidisation in achieving the targets established by the public authorities has not been verified in the methods currently envisaged in the draft decree and could, in addition to distorting competition, increase the bills of electricity consumers as a whole.

Payment of the premium to demand response operators would generate a further increase in CSPE, a tax which already puts pressure on household purchasing power and the competitiveness of businesses (the unit amount of CSPE tripled between 2010 and 2013). Any new increase in CSPE must be carefully measured against the expected benefits.

The Autorité considers that the effectiveness of this premium, which should be such that it compensates the negative impacts of the increase in CSPE and therefore in the cost of electricity, has not been demonstrated in order to achieve the environmental targets set by the public authorities. There are, in fact, public mechanisms with the same aims where the cost is already passed on in consumers' bills (e.g. energy certificate mechanism, GHG emission allowances). In addition, there are still major doubts as to the causal links between demand response and energy savings, since above all demand response creates a postponement in consumption.

Moreover, the decree provides insufficient details of the conditions attached to payment of the premium, resulting in fears of an escalation in costs.

Under these conditions, the Autorité recommends that the government provides

a much stricter framework for the implementation of the planned premium: the aim must be solely to fund contributions to objectives in the general interest, on the condition that the benefits of such contributions are properly demonstrated and that they are not compensated in any other form.

Furthermore, it invites the government to refer this measure to the European Commission so that it may be examined under the rules of state aid.

The Autorité also wishes for a genuinely level playing field to be established between the various competitors on the demand response market

The Autorité has recommended several measures aimed at governing the activity of EDF, which enjoys major advantages as a result of its position as former incumbent monopoly holder, on the emerging electricity consumption demand response market. To this end, the Autorité proposes providing all demand response operators with some of the data held by EDF on its electricity customers, data which would make it possible to identify demand response opportunities.

This measure is similar to the injunction pronounced against France Télécom in decision 02-MC-03 of 27 February 2002, later confirmed on the merits of the case by decision 07-D-33 of 15 October 2007 which was instrumental in opening up the ADSL market in France.

In addition, the Autorité would like to draw the government's attention to the fact that the EJP and Tempo tariffs (regulated tariffs proposed by EDF including both electricity supply and demand response), in their current form, raise doubts with

regard to the application of European law. It seems crucial at the very least that these regulated tariffs cover the costs borne by EDF.

Finally, the Autorité recommends that the role of a system operator is declared incompatible with that of the demand response operator.

The involvement of system operators in the competitive landscape of demand response, which is not formally excluded by the draft decree, would present a risk of the distortion of competition. Indeed, system operators, if authorised to also be demand response operators, would have an advantage over their competitors, in particular due to the monitoring powers with which they are vested and the sensitive information to which they have access as a result of their network operator role.

The Autorité has furthermore drawn up a recommendation on the monitoring of the demand response market

The draft decree tasks primarily the RTE with the prior accreditation of demand response operators and certification of the demand response volumes achieved, but it also envisages that these tasks may be delegated to distribution system operators. The Autorité is not in favour of this potential delegation since the majority of distribution system operators cannot offer sufficient guarantees of independence in relation to the electricity suppliers, who are potential demand response operators.
Within the framework of its opinion, the Autorité has finally set out a certain number of recommendations concerning the conditions for the operation of the demand response market.

Full text of opinion Nr 13-A-25 of 20 December 2013 on consumption demand response in the electricity sector

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