

- **European Commission: EDF Commitments to open French Electricity Market to Competition made legally binding**

On 17 March 2010, the European Commission has adopted a decision under Article 9 of Regulation 1/2003 by which it made legally binding commitments offered by the French electricity group EDF. EDF offered these commitments in response to the Commission's concerns that EDF's electricity supply contracts may hinder the entry and expansion of EDF's competitors on the French market for electricity supplies to large industrial consumers. Under the commitments, EDF will make sure that every year a significant number of customers are free to contract with other electricity suppliers. Resale restrictions will also be removed. This decision is part of a number of measures aimed at addressing competition problems in French electricity markets that will structurally change them in the longer run.

In December 2008, the Commission sent EDF a statement of objections expressing the concern that the scope of application, duration, and exclusive nature of EDF's supply contracts may prevent other electricity suppliers from entering and expanding in the French market for electricity supplies to large industrial users. This alleged foreclosure affected both suppliers that sought to act as a consumer's main supplier and those that wanted to supply electricity as secondary suppliers, i.e. to customers that have already contracted with a main supplier. The Commission also objected to restrictions on customers preventing them from reselling the electricity contracted with EDF. The Commission took the view that such behaviour was an abuse of a dominant position enjoyed by EDF on the relevant market in contravention of Article 102 of the EU Treaty. Indeed, for competition to develop, EDF's competitors need to have access to customers which are currently tied to EDF through its customer portfolio.

Following the Commission's statement of objections, EDF undertook to ensure that an average of 65% of the electricity that it has contracted with large industrial consumers will return to the market every year, because the contract ends or because customers will be able to opt-out of their contract for free. EDF has some flexibility to meet this average over the lifetime of the commitments, but each year at least 60% of its total contracted electricity volumes must return to the market. In addition, future contracts between EDF and large customers will have a maximum duration of five years, unless the customer can opt-out from the contract for free at least every five years. Moreover, EDF will now always offer customers the possibility to conclude a non-exclusive contract, ensuring that customers will always have the option to partly source their electricity requirements from other suppliers. In this way, competitors can also compete to supply a customer that already has a contract with EDF. This will facilitate the emergence of more effective competition in supplying large electricity consumers in France. This commitment will be binding on EDF for ten years unless its market share drops below 40% for two consecutive years.

The Commission's statement of objections also expressed the concern that customers could not resell the electricity they had contracted to purchase from EDF. EDF will now remove these restrictions and even facilitate resale if requested by a customer. This commitment will apply for ten years without the possibility of earlier termination.

Electricité de Strasbourg, a company which is part of the EDF Group and which also supplies large electricity consumers in France is equally bound by these commitments. The EDF Group will submit yearly reports to the Commission and the French energy regulator, the "Commission de Régulation de l'Énergie" (CRE) on compliance with the commitments.

In November 2009, the Commission conducted a market test. Generally, the respondents welcomed the commitments and acknowledged that they were relevant and adequate to remedy the competition concerns identified by the Commission. The observations did not provide grounds to question the quality of the commitments but allowed to improve their effectiveness.

The final commitments of EDF allow, in a proportional manner, to bring the foreclosure of the French market for electricity supply to the large industrial customers in France to an end and, thus, guarantee a real possibility for customers to obtain supplies from alternative suppliers and, for the latter, a real opportunity to enter or expand on the market. Moreover, the commitments, by abolishing any restriction on the resale of the electricity supplied by EDF, or even by facilitating such a resale under certain conditions, will enable the customers concerned

to manage more easily and with more flexibility their electricity supplies, and could, in the long run reinforce the liquidity of the French wholesale market.

See further:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/290&format=HTML&aged=0&language=EN&guiLanguage=en>

[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39386](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39386)