ACQUISITIONS (ELECTRICITY): THE EdF / LE CASE

Subject: Acquisitions

Industry: Electricity supply
(Some implications for other industries)

Parties: Electricite de France
London Electricity

Source: Commission Statement IP/99/49, dated 27th January 1999

(Note. In approving this acquisition, the Commission took into account that the interests of small consumers would be protected by the existence, at least in the near future, of national rules giving them a free choice of supplier. In other words, consumers will not be protected by the EC rules on competition as such but by the national rules on electricity supply. This may prove adequate for consumer protection, but does call in question the extent to which the EC rules are applied with consumers' interests in mind. By the same token, the Commission refused to refer the case back to the UK authorities, saying in effect that UK rules on electricity supply met the UK interest and that it was up to the Commission to take the decision on the issue of EC rules on competition. The Commission is probably right; but the case is not entirely satisfactory.)

After investigation under the Merger Regulation the Commission has cleared the acquisition of London Electricity by Electricite de France (EdF). EdF is a French wholly State-owned group, whose principal activity is the generation, transmission, distribution and supply of electricity in France. It also supplies a small part of United Kingdom (UK) demand for electricity, through the France / UK interconnector cable. London Electricity (LE) distributes and supplies electricity in England and Wales, principally in the London area. It is one of the twelve Regional Electricity Companies (RECs) operating in England and Wales.

The Commission found that the operation would not materially affect competition. The parties' activities overlapped only to a very small extent in generation, where EdF supplies less than 6% of UK demand, via the interconnector, and LE accounts for less than 0.5% of demand. Several other generators (such as National Power, Powergen and British Energy) were found to have substantially larger shares. Nor was the vertical integration between EdF as a generator and LE as a distributor and supplier likely to lead to anti-competitive effects. The Commission also took note of certain regulatory measures which had been agreed between the parties and the sectoral regulator for the UK's liberalised and privatised electricity industry, the Director General of Electricity Supply (DGES).

As well as the horizontal overlaps mentioned above, the Commission also examined the possibility that the vertical integration of the two firms might lead to adverse effects on competition, particularly for smaller customers in the

London area, where LE was dominant. Larger customers in the UK have for some time now been able to source their electricity needs from any of the various competing suppliers active in the market, instead of being tied to a single monopoly supplier for their region. The UK is in the process of extending this freedom to all customers, and will have completed this action by I June 1999. The Commission's examination took account, among other things, of the existing framework of sectoral regulation of the electricity industry in the UK, which includes the setting by the DGES of maximum prices for supplies to small customers, and found no grounds for concluding that anti-competitive effects were likely to arise from the vertical integration aspects of the merger.

At the same time, the Commission decided on requests from the UK authorities for the case to be referred back to them for examination under national competition law (Article 9 of the Merger Regulation), and for the recognition of certain public interest matters as "legitimate interests" not falling within the scope of European Community control under the Merger Regulation (Article 21.3 of the Merger Regulation). Both requests were made in the context of the system for the regulation of the electricity industry in the UK.

Briefly, the UK authorities were concerned that the DGES should remain able to take certain measures to ensure regulatory transparency and protect consumers and other small customers, in particular, from any adverse effects that might arise from the vertical integration between EdF and LE. These measures would, broadly:

- prevent internal trading between the generation and supply businesses involved;

- prevent the construction or acquisition of "embedded" generation plant without prior consent of the DGES;

- secure a regulatory "ring fence" around the electricity supply business of LE and the placing of generation outside it.

The Commission noted that these regulatory measures were similar to those which have been applied by the UK authorities in a number of previous cases in the sector which fell to be examined under national, rather than EU, merger control law. It also noted that the notifying party had reached agreement with the DGES on these modifications.

After examining the two requests, the Commission found that since, on the information available, the operation was not likely to lead to any adverse effects on competition, the criteria laid down in the Merger Regulation for a case to be referred back to the national authority were not met.

Moreover, the measures communicated to the Commission amounted to ongoing regulatory activity under the UK's existing system. Such activity was not precluded by the Regulation, so it was unnecessary for the Commission to recognize a "legitimate interest" in respect of them before they could be taken. Accordingly, the Commission has declared the operation compatible with the common market. □