COMMISSION STATEMENT (ELECTRICITY): THE EDF CASE

Subject: Liberalisation

Industry: Electricity distribution

Parties: Electricite de France (EDF)
Montedison

Source: Commission Statement MEMO/01/187, dated 17 may 2001

(Note. Strictly speaking, this is not a case at all. The Competition Commissioner, in this report of his recent speech,, regrets that he does not have power to deal with it as a case under existing competition rules. He has a point: the Commission is working towards complete liberalization of the electricity market but, as he explains, has been frustrated in its aims.)

The expansion of dominant companies in markets still being liberalised such as electricity is a worrying phenomenon, which does not favour competition. However, the Commission does not always have the right to intervene. This is the case in relation to EDF's acquisition of 3.97 percent of Montedison's shares, which does not provide it with any controlling capacity and, therefore, does not have to be notified to the Commission. The Commission does not have a duty or a right to examine it.

I understand the possible frustration provoked by this kind of operation which stems from the perception of an imbalance in the levels of market opening in various EU Member states. The possibility for this asymmetric situation derives from a piece of legislation, the so called electricity liberalisation directive, which was approved by the Member States. This directive sets only minimum liberalisation requirements which are lower than those originally proposed by the Commission while allowing Member States freely and unilaterally to proceed further in the liberalisation process. Most countries have used this possibility to create a more competitive environment for customers in terms of choice and prices. France, on the other hand, stuck to the strict minimum.

The Commission made ambitious proposals in March 2001 to ensure a complete opening of the electricity market by 2005. However, the European Summit of Heads of State and Government in Stockholm, on the initiative of the French, ruled out that deadline. That is a pity, especially since the decision requires only a qualified majority in the Council of Ministers. I personally am concerned to see this tendency by Member States to seek unanimous consent even in areas where the Treaty foresees qualified majority voting. This tendency puts a brake to the creation of a truly single market.

Regarding European competition rules, the Commission has applied and will continue to apply the existing competition rules with the maximum determination. In the last few years we have started several proceedings:
against companies abusing a monopolistic situation in their national markets,
favouring the emergence and strengthening of independent market forces,
to develop cross-border trade between Member States through a number of interconnector related cases.

These cases also involved the French company EDF. For instance, in applying the merger regulation, the European Commission authorised the acquisition of joint control of German electricity company EnBW by EDF and OEW in February only after significant commitments were offered by the parties, including the release of generation capacity by EDF. EDF undertook also to cut many of its links with the French electricity generator CNR, which has now become an independent producer on the French market.

Another case that has raised competition concerns is the EDF/Louis Dreyfus case. EDF envisaged forming a joint venture for the trade of electricity with Louis Dreyfus. The Commission cleared the venture only after EDF had undertaken not to offer trade services in France until the market is effectively open.

The Commission is currently examining the proposed acquisition of Hidrocantabrico by EnBW which is controlled by EdF and, without prejudging the conclusion of the review, I can say that the Commission will attach particular attention to possible competition problems deriving from the elimination of potential competitors of EDF.

The Commission is also closely examining the situation in relation to access to the tranmission networks and transmission capacity allocation methods to make sure there is no favouring of former monopolists over new entrants. Access to the grid and capacity allocation is particularly important for interconnectors among Member States. The Commission has obtained significant guarantees regarding the capacity allocation method in the French/UK interconnector and it is currently investigating the French/Spanish interconnection as well as examining the French/Italian interconnector.

I want to insist again that, in spite of the unsatisfactory state of liberalisation obtained through the legislative route, the Commission is and will continue to make the utmost use of the available instruments under the competition rules and will continue to monitor the markets so that it can move quickly to punish any violations of the rules. ■

The report on the following pages, of the *TNT Traco* case, is taken from the website of the Court of Justice of the European Communities and is freely available. It is subject to correction before publication in the official Reports.