SUPPLY RESTRICTIONS (NATURAL GAS): THE NORWEGIAN GAS CASE

Subject: Supply restrictions
Market share
"Extraterritoriality"

Industry: Natural gas

Parties: Statoil, Norsk Hydro and others listed in the report below

Source: Commission Statement IP/02/1084, dated 17 July 2002

(Note. It is just as well that this case proceeded to a settlement, since it raised a number of problematic questions of law; not least the legislative requirements of a non-Member State. On the whole, the outcome of the settlement is satisfactory from the point of view of creating a single market for gas in the European Union.)

The Commission has decided to accept the undertakings offered by certain Norwegian gas producers - most prominently Statoil and Norsk Hydro - and in return to close the case relating to the joint sale of Norwegian natural gas. Statoil and Norsk Hydro confirmed in particular that they would market their gas individually and they committed themselves to offering respectively 13 billion and 2.2 billion cubic meters (BCM) of gas for sale to new customers over a period of approximately four years. On an annual basis this corresponds to more than 5% of the total sales volumes of Norwegian gas. Commenting on the decision, the Commissioner Mr Monti expressed satisfaction with the outcome of the case. "Norway is one of the largest gas producing countries in the world accounting for approximately 10% of EU gas consumption. The undertakings will contribute to the creation of a single market for gas in Europe, since European gas purchasers will have a wider choice between gas suppliers from Norway. They will also facilitate the establishment of new supply relationships." According to Mr Monti, the case showed that competition issues concerning non-EU gas producers could be settled with the Commission in a manner that took account of the interests of the parties while respecting European competition law.

The case concerns joint sales, since at least 1989, of Norwegian natural gas through a single seller, the so-called GFU (Gas Negotiation Committee). The GFU comprised two permanent members, Statoil and Norsk Hydro, Norway's largest gas producers, and was occasionally extended to certain other Norwegian gas producers. The main task of the GFU was to negotiate the terms of all supply contracts with buyers located - inter alia - in the EU on behalf of all natural gas producers in Norway.

In June and July 2001 the Commission initiated formal proceedings against approximately 30 Norwegian gas companies arguing that the GFU scheme was incompatible with European competition law. Both the gas companies and the Norwegian Government claimed, at a hearing in December 2001, that European

competition law should not be applied, since the GFU scheme had been discontinued for sales to the EEA as of June 2001 following the issuance of a Royal decree by the Norwegian Government. They also argued that European competition law could not be applied, since the Norwegian gas producers had been compelled by the Norwegian Government to sell gas through the GFU system established by the Norwegian Government.

Following the hearing and while reserving the respective legal positions, the Norwegian gas producers and the European Commission explored the possibilities for a settlement. In this respect a distinction was made between (1) the permanent members of the GFU (Statoil and Norsk Hydro), (2) six groups of companies actually selling Norwegian gas through contracts negotiated by the GFU (ExxonMobil, Shell, TotalFinaElf, Conoco, Fortum and Agip) and (3) all other Norwegian gas producers involved in the formal proceedings.

As regards Statoil and Norsk Hydro, the settlement consists of two main elements, namely (1) the discontinuation of all joint marketing and sales activities unless these are compatible with European competition law (for existing supply relationships this requires individual negotiations when contracts come up for review) and (2) the reservation of certain gas volumes for new customers, who in the past have not bought gas from Norwegian gas producers. In the latter respect Statoil has undertaken to make available 13 BCM of gas to new customers on commercially competitive terms and Norsk Hydro has undertaken the same for 2.2 BCM. This gas has to be offered for sale during the commitment period running from June 2001 to September 2005. Taking into account that the commitment period already started in 2001 and that certain volumes have already been sold during the last year, the volumes which are still available to new customers are lower than the total volume of 15.2 BCM. External auditors will monitor whether Statoil and Norsk Hydro respect their undertakings to the Commission.

When accepting the undertakings on the volumes for new customers, the Commission noted that a significant number of European customers (most prominently large industrial users, electricity producers and new trading houses) were known to have been looking for alternative sources of supply in the past and continued to do so today. The undertakings would thus facilitate the establishment of new supply relationships. This should also have a positive impact on the European market structure, which is still characterised by dominant suppliers in almost all markets. Most of these dominant suppliers are already customers of the Norwegian gas companies and bought significant gas volumes under contracts, which still run for many years and which in general contain price review clauses.

Finally and although not being part of the GFU case, Statoil and Norsk Hydro confirmed that they would not introduce territorial sales restrictions and/or use restrictions in their gas supply contracts. Both types of clauses are considered incompatible with European competition law as they prevent the creation of a single market, but considered necessary by certain market operators. The Commission welcomed Statoil's and Norsk Hydro's position as it demonstrated

that gas could indeed be marketed in the Community without these anti-competitive clauses.

As regards the other Norwegian companies concerned by the GFU case, the Commission received undertakings from six groups of Norwegian gas companies, which were sellers of Norwegian gas negotiated under the GFU scheme, namely ExxonMobil, Shell, TotalFinaElf, Conoco, Fortum and Agip. For these companies the settlement consists of written commitments to discontinue all joint marketing and sales activities similar to those given by Statoil and Norsk Hydro. For the remaining Norwegian gas producers the Commission decided to close the case on the basis that they would sell Norwegian gas individually in the future.

Commission Vice President Loyola de Palacio, who is in charge of energy matters, and Commissioner Monti made a joint statement to the effect that it would now also be essential to ensure that Norwegian gas could be transported effectively through the European gas pipelines. They said: "We now need to ensure that gas sold by Norwegian gas producers individually can be transported into Europe and thus reach the European gas consumers. The Commission will pursue with vigour any violations of internal market rules and competition rules regarding access of Norwegian gas to European pipelines. We urge national authorities to do the same." ■

Carnival / P&O Princess

The Commission has granted clearance under the Mergers Regulation to the proposed acquisition of British cruise operator P&O Princess plc by US-based cruise operator Carnival Corp. The Commission was initially concerned about the parties' strong position in the cruise market in the UK and in Germany. But after an in-depth analysis it concluded that the strong growth enjoyed in the market, the absence of substantial barriers to entry and the ability for rivals in the market to shift capacity, for example from the US to the UK, would exert a sufficient competitive pressure on Carnival.

On 16 December 2001, Carnival had announced a unilateral pre-conditional offer to acquire all the shares of P&O Princess, a UK-based worldwide cruise company which operates the brands Princess Cruises, P&O Cruises, Swan Hellenic, Aida Cruises, Seetours, and A'Rosa. Carnival is also a cruise company active worldwide. Its brands include Carnival Cruise Lines, Holland America Line, Costa Cruises, Cunard Line, Seabourn Cruise Lines and Windstar Cruises.

In the course of its investigation, the Commission was in touch with the UK's Competition Commission, which was assessing and has now cleared a rival bid by Royal Caribbean, as well as with the Federal Trade Commission of the United States, which is still examining both bids for P&O Princess.

Source: Commission Statement IP/02/1141, dated 24 July 2002