

Bulgaria - Energy Companies Fined for Abuse of Dominance on the Liberalized Electricity Market

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The Bulgarian Commission for Protection of Competition (“CPC”) has imposed fines on two out of the three integrated electricity companies in Bulgaria, part of the Austrian EVN group and the Czech CEZ group.

The CPC initiated investigations against the three Bulgarian electricity distribution companies – CEZ, Energo-Pro and EVN and their affiliated end suppliers and electricity traders back in 2013 following a complaint by independent electricity traders. The three groups of companies were accused of abuse of dominance and the conclusion of prohibited agreements aiming to reduce the liberalization of the electricity market on medium and low voltage.

The proceedings ended in the second half of December 2017 with 4 fines for abuse of dominance, imposed over CEZ Distribution AD (BGN 1,057,140, approximately EUR 528,000); CEZ Electro Bulgaria AD (BGN 1,136,400, approximately EUR 569 700); Electro Distribution South EAD (BGN 1,896,210, approximately EUR 948,100); EVN Supply EAD 1,902,995, approximately EUR 951,497). The CPC ruled that Energo-Pro’s group of companies had not abused its dominant position and thus the competition authority did not fine either of the companies within Energo-Pro’s economic group.

In Bulgaria, the liberalized electricity market is not full-functioning and the country

still has a path to walk to achieve the desired levels of liberalization as well as to educate commercial and household customers to switch to the liberalized market. The liberalization of the energy market in Bulgaria is defined as a priority for the Bulgarian Ministry of Energy, and thus it is understandable that the market behavior of the electricity companies is subject to monitoring also by the CPC.

The proceedings were initiated in 2013 following a complaint to the CPC by an electricity trading company – Energy MT EAD.

According to the applicant, the three groups of companies infringed competition law by performing the following actions:

1. The electricity distribution companies (CEZ Distribution, EVN Bulgaria Distribution and Electro Distribution South) did not comply with the legal 14-day term for issuance of a statement about the compliance of the clients with the technical requirements of the grid. Issuance of such statement is a key document for transition by the commercial clients to suppliers of electricity on the liberalized market;
2. The end suppliers did not comply with the terms for issuance of certificates for lack of obligations, which also is required for a client to switch to the liberalized market;
3. The electricity distribution companies did not provide access to their data bases containing information about the individual consumption of each consumer to independent traders. Usually such information is required by the consumer or the trader of electricity to which the consumer has intention to switch. With such a behavior the registration of the commercial consumers to the liberalized market of electricity is prevented;
4. The electricity distribution companies shared the information about the hourly consumption of all clients only with to the electricity trading companies within their economic groups. The remaining traders of electricity on the liberalized market did not have access to this crucial information. The information is of importance, since the most expensive segment on the electricity market is the balancing energy. Thus, the traders of electricity on the liberalized market will not be able to make an adequate offer without having information about the consumption of the clients. Lack of such information may lead to acquisition of unnecessary amounts of balancing

energy which will increase the price of the electricity for the clients or reduce the margin of the trader.

In the General Terms and Conditions of EVN and Energo-Pro an option for provision of such information is envisaged, whereas in CEZ's General Terms and Conditions such an option is absent.

5. The electricity distribution companies intentionally delayed the preparation of framework agreements with the traders of electricity on the liberalized market. Such delays prevented the conclusion of the so-called "combined agreements" between the trader of electricity and the consumer by virtue of which the consumer may execute all payments for the services rendered to the trader, but not to execute a separate payment to the distribution companies about its services related to the use of the grid.

Within its legal and economic analysis, the traders of electricity within the economic groups of EVN and CEZ have significant presence on the markets of trade of electricity on medium and low voltage to commercial clients on the territories where the respective supply and distribution companies have licenses. The CPC also considers that the entry barriers on the above markets is relatively high. Concerning the affected market, the commission defined it as the liberalized market of trade with electricity with commercial clients on medium and low voltage.

CPC on EVN and CEZ's behavior

In general, the CPC found that within each group of companies, there was an internal strategy for increase of the presence on the Bulgarian market. Considering the liberalization of the Bulgarian energy market, such a behavior resulted in exchange of information which benefited the traders of electricity on the liberalized market forming part of EVN or CEZ's economic groups. For comparison, other traders of electricity on the liberalized market do not have access to information about the consumption of the commercial clients, the technical status of the grid, the key consumers, their addresses and contacts. As a result, the free traders of electricity are placed at a disadvantageous position being prevented from the possibility to know who the key commercial clients are, what is their consumption, key contacts, provision of necessary documents, e.g. lack of liabilities, technical status, etc. Whereas, there was evidence collected by the CPC,

that within CEZ and EVN, expert groups were created in order to target the key commercial clients and to preserve them as clients of the electricity trade forming part of CEZ and EVN's economic groups.

In addition, the fined companies were the first to know about the intention of a commercial client to switch to a trader of electricity outside the economic groups of EVN and CEZ.

CPC on Energo-Pro's behavior

As distinct from the behavior of EVN and CEZ's group, the CPC found that within Energo-Pro group, there was no internal coordinated practice for preserving existing clients and preventing traders of electricity outside Energo-pro's economic group to get information from Energo-Pro about the commercial clients using electricity on medium and low voltage. The CPC concluded that Energo-Pro's behavior does not exceed the normal competitive behavior of a participant on the relevant market. Consequently, the CPC accepted that no breach of competition was concluded by Energo-Pro group of companies.

Conclusion

The abuse of dominance cases before the CPC related to the liberalization of the energy market are not new within the European Union. In 2017, the French Competition Authority fined ENGIE EUR 100,000,000 for abuse of dominance by exploiting the historical data of its consumers on the regulated market of natural gas in order to convert them as clients on the liberalised market of natural gas. Based on the Communiqué of the French Competition Authority, the behaviour of the fined undertakings in France and Bulgaria are similar. Apparently, the assessment of the two national competition authorities of the above behaviour is similar. The two Bulgarian decisions are not final and are subject to appeal before the Supreme Administrative Court.