

Bulgarian Energy Holding suspected in abuse of dominance on Bulgarian wholesale electricity market

In August 2014, the European Commission sent a Statement of Objections to the Bulgarian Energy Holding (BEH) within the case opened by the Commission against BEH in November 2012. With this action, the Commission stated its preliminary view that territorial restrictions on resale contained in BEH's electricity supply contracts with traders on the non-regulated Bulgarian wholesale electricity market may breach EU antitrust rules.

The Commission believes that BEH, the incumbent state-owned vertically-integrated energy company in Bulgaria, might be hindering competition on the non-regulated wholesale electricity market in Bulgaria by imposing restrictions on where the electricity supplied by BEH may be resold.

The Commission was investigating certain provisions in BEH's electricity supply contracts with traders, which may restrict their trading partners' freedom to deliver electricity purchased from Bulgarian Energy Holding by prescribing where the electricity has to be delivered. According to these provisions, electricity supplied by BEH may, for example, be resold only within Bulgaria and not exported.

These contractual provisions may constitute territorial restrictions and have the effect of distorting the allocation of electricity within the Single Market and partitioning electricity markets along national lines. Such a practice would both hinder competition and undermine the integration of EU electricity markets. It was also found out that the contracts contained control and sanctioning mechanisms which allowed BEH to monitor and punish customers who fail to comply with these territorial restrictions.

The Commission's provisional finding is that these territorial restrictions are limiting the purchasers' freedom to choose where to resell the electricity bought from BEH and thus constitute an abuse of BEH's dominant market position, which is prohibited by Article 102 of the Treaty on the Functioning of the European Union (TFEU). Such behaviour, if established, has the effect of distorting the allocation of electricity within the Single Market, affecting liquidity and efficiency of electricity markets and raising artificial barriers to trade between Bulgaria and other Member States.

Sending a statement of objections is a formal step in Commission investigations, where the Commission informs the parties concerned in writing of the objections raised against them.

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The addressees can examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national competition authorities. The Commission takes a final decision after the parties have exercised their rights of defence.

If, after the parties have exercised their rights of defence, the Commission concludes that there is sufficient evidence of an infringement, it can issue a decision prohibiting the conduct and impose a fine of up to 10 % of a company's annual worldwide turnover.