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COMPETITION LAW: LATEST ON ENERGY SECTOR STATE AID CASES

The European Commission, as EU competition watchdog, has been dealing with a number of energy-related state aid cases in recent months. We bring you a brief update.

The Commission has ruled that Germany's tax-exemptions for dual use of energy products and use of energy products in processing minerals do not constitute aid, as being part of the overall national taxation system. However the watchdog said exemptions from heavy fuel duty granted by France, Ireland and Italy for alumina production do constitute state aid as these exemptions are highly selective, benefiting only one company in one sector in each country. The Commission decided 80% of the value of the tax exemptions as from 1 January 2004 are in line with aid rules but, as the companies have not made binding commitments to improve their environmental record, the remaining 20% is deemed to be, in accordance with the guidelines on state aid for environmental protection, illegal aid and France, Ireland and Italy are directed to recover the money from the beneficiaries.

The Commission has opened an enquiry into low regulated power tariffs for large and medium-sized companies in Spain, which led to a €3.8 billion deficit in the electricity system in 2005, to be financed by a charge on all electricity bills for the next 14 years. The Commission will assess whether these industrial power tariffs (ie not the regulated tariffs applicable to small business and households) imply state aid to energy intensive firms and to power companies and if so, whether the aid could lead to distortions of trade and competition within the EU Single Market. However, the watchdog recently authorised the German government to grant €76 million in aid over three years to Conergy for the creation of a new production plant for solar energy modules in Frankfurt on the Oder.

The Commission opened an enquiry into whether Swedish plans to grant CO2-tax exemptions to companies covered by the EU Emissions Trading Scheme (ETS) comply with state aid rules, on the grounds that the measure might distort competition by increasing tax differentiation in an area where the EU has harmonised taxes so as to create a level playing field between companies, or might run against the "polluter-pays" principle, as companies participating in the EU ETS have received the emissions allowances for free.

The Commission is also looking into whether a €570 million French export credit guarantee for equipment supplied by Areva Framatome for the nuclear power plant project led by Finnish power firm TVO is in line with state aid rules. The watchdog will ascertain whether the total cost (interest rate plus guarantee premium paid by TVO to the French government) of the loan conforms to market practice for this type of financial instrument.

The Commission green-lighted a €16 million Italian subsidy to municipal utility AEM Torino to cover "*stranded costs*" incurred in the sector liberalisation process, but directed Rome to freeze payments until previous illegal aid to AEM has been reimbursed.

See also DN 05/10/06 et al