

Portugal

ABUSE OF A DOMINANT POSITION

Electricity sector—artificially limited supply—infringement decision—fine imposed—possible appeal

^ Abuse of dominant position;
Electricity supply industry;
Energy supply companies;
Portugal; Refusal to supply

In September 2019, the PCA also imposed a fine of €48 million on EDP—Gestão da Produção de Energia, S.A. (“EDP Produção”), for an alleged abuse of dominance in a part of the Portuguese electric system, namely the market for secondary reserve services in mainland Portugal.

Secondary reserve services are a part of service systems that ensure the adequate levels of safety, stability and service quality in the supply of the national electric system. Service systems exist to guarantee the permanent balancing between power output and consumed energy, overcoming temporary unbalances that may occur. Secondary reserve services are a part of these services and supply immediate assistance to temporary unbalances (for a period of 30 seconds to five minutes). EDP Produção has a dominant position in the supply of tele-regulation services within the Portuguese electricity market and is now accused by the PCA of using its position to influence price formation in the tele-regulation market. The PCA believes that EDP Produção artificially limited the supply of tele-regulation or secondary reserve services its power plants between 2009 and 2013 as to take advantage of a special compensation regime (the CMEC regime).

The CMEC (“Custos de Manutenção do Equilíbrio Contratual” or the cost of maintaining the contractual equilibrium) was implemented in 2004 during the process of liberalisation of the electricity sector. The CMEC was created to ensure that EDP Produção’s generating plants would continue receiving a remuneration equivalent to the remuneration usually received under the Power Purchase Agreement (“PPA”) in place at the time with system operator, REN. The CMEC was established as an additional payment over the revenue obtained in the market, so that the total margin would be similar to that existing when the PPA was in force/

According to the PCA, EDP Produção’ simultaneously obtained higher compensation payments in the context of the CMEC regime and higher revenues from the placement in the open market of reserve services from its non-CMEC generating units.

Investigations were first opened in September 2016 and the statement of objections (“SO”) was issued two years after that that, in September 2018.

According to the PCA, this historically high fine in the energy sector is the public enforcer’s response to damages caused by EDP Produção to consumers of around €140 million. EDP Produção has publicly declared that it would appeal the decision.

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