

Vj-134/2006

Descriptive summary of the case

Due to the geographical nature of Hungary wind power plants can only be built in the North-Western part of the country. This falls within the territory of the public utility supplier, ÉDÁSZ, which has a monopoly in its territory in public utility supply and distribution. In order to build a wind power plant, a contract relating to the connection to the public distribution power grid must be concluded with ÉDÁSZ. According to the information at the disposal of the Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH), ÉDÁSZ discriminated between the undertakings intending to conclude a connection contract with it. While some undertakings were required to submit all other necessary authorisations issued by other authorities, others only had to submit a statement that they are in possession of the necessary authorisations. As a result of this, the latter undertakings required a shorter period of time to fulfil the administrative requirements and could, consequently, choose the best possible locations for a wind power plant. This means that the discriminative treatment resulted in a competitive advantage for those undertakings that only had to submit a statement, and a disadvantage for those, that were required to submit the authorisations.

Furthermore, the GVH was informed that ÉDÁSZ established a list of engineering offices, the plans of which are accepted by ÉDÁSZ. On the basis of the former, the GVH opened proceedings on the 28th of August 2006.

The GVH made its decision in the case on the 8th of December 2010.

The GVH found that in connection with the wind-power production, two fields of competition might be distinguished. First there was competition among the undertakings (investors) to obtain the authorisation for wind-power production and, subsequently, there is actual competition among those undertakings that obtained the authorisation in the market of wind-power production. Consequently, the results of the authorisation phase might indirectly determine the effect that the competition on the market for production may have on the consumers.

The GVH established that entry into in the wind-power production market is decisively determined by the fact that wind-power as a resource is only limitedly available on specific geographical territories and that the capacity of the power-grid to take in the power is constrained.

Furthermore, the GVH found that the fact and timing of the conclusion of the connection contract (based on the practice of the Hungarian Energy Office concerning the authorisation of wind-power production) was a decisive factor in influencing the possibility of market entry.

The GVH found proven that while some undertakings were required by ÉDÁSZ to submit all necessary authorisations issued by other authorities, others only had to submit a statement that they are in possession of the necessary authorisations. However, the GVH took into account the fact that no evidence had emerged that proved that ÉDÁSZ had gained any advantage as a result of this discriminative conduct, i.e. all undertakings intending to conclude connection contracts with ÉDÁSZ were independent of it.

The evidence did not allow for the conclusion that the conduct of ÉDÁSZ would restrict competition to the detriment of consumers. It was not proven that the number of competitors

would decrease as a result of the conduct of ÉDÁSZ, having regard to the fact that the number of market entrants was determined by the Hungarian Energy Office.

Although the conduct of ÉDÁSZ could place some undertakings at a disadvantage, no data emerged that would suggest that these undertakings would have produced wind-power under terms that would have been more favourable for the consumers. This is due to the fact that both the prices and the quality-requirements of the wind-power production are regulated.

The GVH concluded that it was not proven that the discriminative conduct of ÉDÁSZ would distort competition among the undertakings and would have an unfavourable effect on consumers and it, therefore, terminated the proceedings in this regard.

The allegation that ÉDÁSZ established a list of engineering offices and that only the plans of these would be accepted by ÉDÁSZ was not justified and, therefore, the GVH also terminated the proceedings in this regard.