IP/03/566

Brussels, 24 April 2003

Commission and Danish competition authorities jointly open up Danish gas market

The European Commission's competition department and the Danish Competition authority have settled an antitrust investigation involving the incumbent Danish gas supplier DONG and the country's main gas producers Shell, A.P Møller and ChevronTexaco after the latter committed themselves to market their production individually. DONG also agreed to release the producers, grouped in a cooperation called DUC, from the obligation to offer all their gas first to DONG. The successful outcome follows the settlement reached in 2002 with the Norwegian gas producers and is another step towards the creation of a European single market for gas, which will lead to improved services and lower prices for businesses and consumers alike. The investigation also provides a good example of how the Commission and the national competition authorities can work together to foster a more competitive business environment.

"The commitments received will contribute to the creation of a competitive gas market in Denmark and neighbouring countries," said Competition Commissioner Mario Monti, adding: "This case shows how the Commission and the national competition authorities can work hand in hand to the benefit of businesses and consumers. I am confident that we will see more of this good co-operation and sharing of work in the new, modernised way of applying competition rules".

The investigation by the Commission's Competition Directorate General (DG Competition) of the joint marketing of North Sea gas by the parties tothe Danish Underground Consortium (DUC) started in July 2001. DUC, which accounts for 90% of Danish gas production, is composed of Shell (46%), A.P Møller (39%) and ChevronTexaco (15%). The investigation also concerned certain aspects of the supply relationship between DUC and DONG as established in Gas Sales Agreements in 1979, 1990 and 1993 between DONG and each of the DUC partners. By means of these contracts the DUC partners sell DONG enough gas to satisfy the entire Danish demand and to supply additional volumes to Sweden and Germany. In the course of its investigation the Commission learnt that these Gas Supply Agreements had been notified to the Danish Competition Authority.

The Commission initially focused its attention on the joint marketing arrangements and DUC's understanding that the scheme was covered by EU Regulation 2658/2000, which exempts certain forms of joint distribution (so-called Specialisation Block Exemption). DG Competition disagreed with the assessment of the parties and following on the example of the Norwegian gas companies in the GFU case (IP/02/1084 of 17.7.2002), the DUC partners - whilst maintaining their legal position - agreed to cease their joint marketing arrangements and to market their gas individually in future.

In order to facilitate the establishment of new supply relationships the DUC parties will also offer in total seven billion cubic meters of gas for sale to new customers over a period of five years starting 1st January 2005 – or earlier if possible -, i.e. when new gas volumes are available. On an annual basis this corresponds to approximately 1.4 BCM, i.e. 17% of the total production of the DUC parties. When accepting this commitment, DG Competition noted that a significant number of customers inside and outside Denmark have actively looked for alternative sources of supply in the past and continue to do so today.

Both the Commission and the Danish competition authorities expect that this commitment will facilitate bringing competition to the Danish market, which is still dominated by DONG, and will increase competition in neighbouring Netherlands and/or Germany. In this respect it should be noted that the DUC parties and DONG have decided to build a new pipeline linking the Danish gas fields with the existing infrastructure to the European continent. This new pipeline is expected to be operational by 1 January 2005 at the latest.

DUC-DONG relationship

In the course of the investigation, DG Competition and the Danish competition authority, which – following the explicit request of the parties - participated in the settlement discussions, also established that the gas supply agreements concluded between the DUC partners and DONG contained certain provisions, which were considered to be anti-competitive.

These will now be ended. They include a provision obliging DONG to report to the DUC partners the volumes sold to certain categories of customers in order to obtain a discount or special prices and the obligation imposed on the DUC partners to offer all their future gas finds first to DONG. In the latter respect DONG committed to refrain from buying the volumes dedicated by the DUC partners to new customers. DONG also committed not to buy any new DUC gas during the time period from today to three years after the commissioning of the new pipeline.

Moreover DONG committed to release the DUC partners from a so-called "necessary adjustment mechanism" which it interpreted as a right to reduce the volumes bought from the DUC partners when these start selling gas into the Danish market. DONG argued that the supply contracts with the DUC partners contain a "take-or-pay provision" obliging DONG to pay for the gas, even if not taken. DONG claimed that it would need the protection of the Danish market in order to respect the take-or-pay obligations. DG Competition and the Danish competition authority accepted this argument as long as DONG's possibilities to sell the gas outside Denmark are reduced due to limited interconnections. Whilst maintaining its legal position, DONG committed itself to release the DUC partners from the clause 6 months after the commissioning of the new pipeline.

In order to facilitate the market entry of the DUC partners and potentially other suppliers into Denmark, DONG furthermore undertook to introduce an improved access regime for its off-shore pipelines linking the Danish gas fields with the Danish main land. In this respect, DONG committed in particular to increase the transparency of the system by publishing information on available capacity, to allow for short term trading in line with the access regime applying to its on-shore pipelines and to introduce interruptible transport contracts.

The Danish competition authority will monitor whether the DUC partners and DONG respect their commitment to the two competition authorities. A non-confidential version of the commitments will be published on the internet site of the companies concerned.