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Commission settles investigation into territorial sales restrictions with Nigerian gas company NLNG

The European Commission has reached a landmark agreement with Nigerian gas company Nigeria LNG Ltd (NLNG), which agreed to delete a clause preventing one of its European customers to re-sell the gas outside its national borders. NLNG also undertook not to introduce this clause in future contracts with European companies and also confirmed that its existing contracts do not contain profit-splitting mechanisms (PSM), nor will it introduce them in new contracts. Both the so-called territorial sales restrictions and profit splitting mechanism violate European Union competition rules. Competition Commissioner Mario Monti welcomed the settlement saying: "This ground-breaking settlement shows that producers of gas in Nigeria and elsewhere can preserve the essential revenues they derive from the sale of gas in the EU while respecting our competition rules. I hope that other non-EU gas producers will feel encouraged to follow the example of NLNG so that we will be able to bring our long-standing investigation to a successful end".

The Commission has been investigating for some time suspected territorial restrictions in gas supply contracts between non-EU producers and European companies which have the effect of preventing the sale of gas outside their national borders. The investigations relates to Nigerian company NLNG, but also Gazprom of Russia and Sonatrach of Algeria, which together account for a very large proportion of gas imported in the EU.

The Commission considers that these clauses are a serious breach of European competition law as they prevent cross border trade and undermine the on-going creation of a European single gas market.

NLNG is the second largest supplier of liquefied natural gas (LNG) in Europe with approximately 5 billion cubic meters of gas shipped every year to customers in Italy, Spain, France and Portugal. The investigation showed that only one of the many European contracts entered into by NLNG contained a territorial sales restriction, from which NLNG has agreed to release its customer. This means that once the gas is delivered and paid for, the buyer is free to re-sell the gas wherever it wishes. This approach is fully compatible with European competition law.

In the discussions and subsequent settlement with the Commission, NLNG also undertook not to introduce territorial restriction clauses and use restrictions into its future gas supply contracts. Use restrictions are clauses preventing the buyer from using the gas for other purposes than those agreed upon.

Furthermore, NLNG confirmed that none of its existing gas supply contracts contained so-called profit splitting mechanisms effecting the EU markets and that it would not introduce these in future contracts. Profit splitting mechanisms are clauses obliging the buyer to pass over to the producer a share of the profits made when re-selling the gas outside its national borders or when the gas is re-sold to a customer using the gas for a different purpose than that agreed upon.

The Commission welcomes this clarification as it demonstrates that non-EU producers can successfully market their gas in the Union without making use of these clauses.

The Commission is hopeful that a satisfactory solution will also be found in the other cases. It should be noted that Russian gas company Gazprom has already informed the Commission that it will not introduce territorial restriction clauses in its future gas supply contracts and is currently negotiating the outstanding issues for the existing contracts.

This is the second break through achieved in less than six months in terms of the application of the EU competition rules in the gas sector which will contribute greatly to the creation of a single gas market in Europe to the benefit of industrial users and, ultimately, the consumer. In July, Statoil and Norsk Hydro of Norway, Europe's largest gas producer, undertook to sell their gas individually and to increase liquidity in the market by reserving significant quantities to new customers (see IP/02/1084 of 17 July 2002). In this settlement the Norwegian companies had also committed not to introduce territorial restrictions and use restrictions in its gas supply contracts.