



## EUROPEAN COMMISSION

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PUBLIC VERSION\*

**Sokolovská uhelná, právní nástupce, a.s.,**  
Staré náměstí 69,  
CZ-356 01 Sokolov

[...]

**Subject: Case AT.39958 – SU/CEZ**  
**Letter pursuant to Article 13 of Council Regulation 1/2003 and Article 9 of**  
**Regulation 773/2004**  
**(Please quote this reference in all correspondence)**

Dear Sir,

- (1) I refer to the complaint lodged by Sokolovská uhelná, právní nástupce, a.s. (“SU”) on 11 November 2011 pursuant to Article 7 of Council Regulation No. 1/2003<sup>1</sup> (“**Complaint**”), regarding alleged infringements of Article 102 of the Treaty on the Functioning of the European Union (“**TFEU**”) by the Czech electricity incumbent, the company ČEZ, a.s. (“**CEZ**”), to the amended version of the Complaint dated 17 April 2013 (“**Amended Complaint**”), as well as to your subsequent letter of 8 January 2014 (“**Letter**”) submitted in

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\* This text is made available for information purposes only. Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...]

<sup>1</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (*OJ L 1, 04.01.2003, p. 1-25*) as amended by Council Regulation (EC) No 1419/2006 of 25 September 2006 (*OJ L 269, 28.9.2006, p. 1-3*).

response to the letter of the Commission informing you about its intention to reject the Complaint.

- (2) Pursuant to Article 13 of Regulation 1/2003, the Commission may reject a complaint on the ground that a competition authority of a Member State is dealing or has dealt with the case. Where the Commission rejects a complaint pursuant to Article 13 of Regulation 1/2003, it shall inform the complainant without delay of the national competition authority which is dealing with the case.<sup>2</sup>
- (3) As explained in the Commission's letter of 9 December 2013, the case referred to in the Complaint has already been dealt with by the Czech Competition Authority ("**UOHS**") under reference No. P334/2011.
- (4) In the Letter, you contest that UOHS has dealt with the case. You essentially state that UOHS has not investigated the issues raised in your parallel complaint filed with UOHS on 19 April 2011 ("**UOHS Complaint**", see paragraph (7)), nor has UOHS [...] a subsequent complaint filed by SU on [...] April 2013 ("**New UOHS Complaint**", see paragraph (13))<sup>3</sup>.
- (5) The Commission notes that UOHS confirmed that it had investigated the claims raised in the UOHS Complaint (see paragraph (9)) as well as that the investigation of the New UOHS Complaint was on-going (see paragraph (13)). In addition, the Commission is not required to assess the adequacy of the arguments used, conclusions reached and methods applied by the national competition authority. That would be the role of the various appeal bodies in a national judiciary system<sup>4</sup>.
- (6) More specifically, you alleged in the Complaint<sup>5</sup> that CEZ has been abusing its dominant position by:
  - (i) applying, in violation of Article 102 par. 2 lit. c) TFEU, towards SU discriminatory prices that do not correspond to the value of performance and conditions on the relevant market; in particular, the price paid by CEZ to SU for lignite is lower than the price CEZ pays to [...];
  - (ii) applying, in violation of Article 102 par. 2 lit. c) TFEU, even more discriminatory lignite prices to SU's sales for CEZ's Tisová Plant; in particular, CEZ has not reimbursed [...];
  - (iii) imposing, in violation of Article 102 par. 2 lit. a) TFEU, on SU unfair trading conditions as it insists upon [...];
  - (iv) imposing, in violation of Art. 102 par. 2 lit. a) TFEU, on SU unfairly low lignite prices.
- (7) In the Complaint, you further indicate that on 19 April 2011, SU lodged the UOHS Complaint which alleged an abuse of dominant position of CEZ on the lignite market (reference No. UOHS-P334/2011/DP/-7064/2011/820/TPo).

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<sup>2</sup> Article 9 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (*OJ L 123, 27.04.2004, p. 18-24*).

<sup>3</sup> See p. 2-3 of the Letter

<sup>4</sup> SU indeed notes in the Letter (p. 2) that it has filed a petition to the regional administrative court in Brno considering "*procedures of UOHS an unlawful interference of the administrative body while it infringed [SU's] constitutional rights*". SU also notes that it complained in the petition about the inactivity of UOHS during the investigation.

<sup>5</sup> See p. 26 ff of the Complaint

- (8) Following a request of the Commission, UOHS confirmed on 24 May 2012, on 17 October 2013 and on 23 January 2014 that SU had lodged the UOHS Complaint alleging a violation of the Czech Competition Protection Act, as well as of Article 102 TFEU by CEZ. CEZ would have allegedly abused its dominant position on the lignite market by:
- (i) applying towards SU a price formula on the basis of which the price paid by CEZ to SU is lower than the price CEZ pays to [...];
  - (ii) insisting that SU [...] while not insisting on a similar principle with other suppliers;
  - (iii) imposing unfair trading conditions as CEZ insists upon [...];
  - (iv) imposing on SU discriminatorily (low) prices which do not correspond to the (high) quality of lignite supplied by SU.
- (9) According to the information provided by UOHS, UOHS carried out an analysis of the UOHS Complaint, as well as of additional documents requested, and came to the conclusion that none of the analysed documents and pieces of information, neither on their own nor in an overall context, would have confirmed a possible abuse of dominant position by CEZ. Consequently, UOHS closed the investigation on 4 December 2012.
- (10) Furthermore, on 17 April 2013, SU lodged with the Commission the Amended Complaint. In the Amended Complaint, SU repeated its allegations that CEZ, in violation of Article 102 TFEU, is abusing its dominant position by:
- (i) applying, in violation of Article 102 par. 2 lit. c) TFEU, towards SU discriminatory prices that do not correspond to the value of performance and conditions on the relevant market;
  - (ii) applying, in violation of Article 102 par. 2 lit. c) TFEU, even more discriminatory lignite prices to the SU's sales for the Tisová Plant;
  - (iii) imposing, in violation of Article 102 par. 2 lit. a) TFEU, on SU unfair trading conditions as CEZ insists upon [...]; in addition, CEZ [...];
  - (iv) imposing, in violation of Article 102 par. 2 lit. a) TFEU, on SU unfairly low lignite prices which contradict the higher quality of the lignite supplied<sup>6</sup>.
- (11) SU specifically indicates in the Amended Complaint that CEZ's behaviour has also been reported to UOHS<sup>7</sup>.
- (12) For the sake of completeness, the Commission observes that SU provides both in the Complaint and in the Amended Complaint an account of an earlier proceeding before UOHS which was conducted under Czech law in 2006 ("**2006 proceedings**") and in which UOHS found a potential abuse of dominant position by CEZ by means of "*setting of different terms in agreements executed between CEZ and its other suppliers for the lignite power plants [...] without objectively justifiable reasons [for differences] in the price formula based on which lignite price for individual producers is determined*"<sup>8</sup>. In the framework of the 2006 proceedings, CEZ proposed remedial measures which were made binding upon CEZ by UOHS and which were supposed to form the basis for the pricing formula(s) in future contracts between SU and CEZ. In the Amended Complaint, SU in addition submits that CEZ

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<sup>6</sup> See p. 25ff of the Amended Complaint.

<sup>7</sup> See p. 4 of the Amended Complaint.

<sup>8</sup> See p. 14-15 of the Complaint and p. 17 of the Amended Complaint.

did not adhere to the remedial measures when concluding [...] with SU post 2006. Consequently, in SU's view, CEZ deceived both SU and UOHS and set a pricing formula in its contract(s) with SU which does not correspond to the remedial measures adopted by UOHS<sup>9</sup>.

- (13) On 17 October 2013, UOHS confirmed to the Commission that in April 2013 SU filed the New UOHS Complaint in which it alleges that in the framework of the 2006 proceedings, CEZ had, for the purpose of designing remedial measures, provided UOHS with inaccurate information and that the remedial measures have been adopted on the basis of such inaccurate information ("**New UOHS Complaint**")<sup>10</sup>. UOHS informed the Commission that the investigation of this submission is still on-going (reference No. P371/13).
- (14) Regarding this, the Commission observes that while the content of the New UOHS Complaint corresponds to SU's description of the 2006 proceedings in the Amended Complaint, the alleged illicit conduct by CEZ would, in any event, relate to proceedings under Czech law and would, therefore, constitute a possible violation of national law rather than an infringement of Article 102 TFEU.
- (15) On 23 January 2014, UOHS complemented its information to the Commission and indicated that the allegations made by SU in Amended Complaint correspond in essence to those in the UOHS Complaint (see paragraph (8)).
- (16) It is clear from the above (see paragraphs (6) and (10)) that the Complaint and the Amended Complaint concern identical alleged conduct, except for the fact that the issue of the violation of remedial measures in the 2006 proceedings was only raised in the Amended Complaint.
- (17) The entirety of the allegations of violation of Article 102 TFEU made in the Complaint and the Amended Complaint corresponds to the allegations specified in the UOHS Complaint (see paragraphs (6), (8), and (10)). Consequently, the proceedings before UOHS which were closed on 4 December 2012 concerned the same alleged infringements on the same market within the same timeframe. UOHS has explicitly confirmed that it has addressed all the allegations made in the UOHS Complaint.
- (18) Moreover, the allegations of the violation of the remedial measures by CEZ described in the Amended Complaint correspond to the allegations made in the New UOHS Complaint (see paragraph (13)). Consequently, the ongoing proceedings before UOHS concern the same alleged infringements on the same market within the same timeframe. UOHS has explicitly confirmed that it has been dealing with the New UOHS Complaint.

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<sup>9</sup> See p. 18 of the Amended Complaint.

<sup>10</sup> The lodging of the New UOHS Complaint was also confirmed by SU in its Letter of 8 January 2014.

(19) For these reasons, I inform you that, pursuant to Article 13 of Council Regulation 1/2003, the Commission rejects your complaint.

*For the Commission*

*Joaquín Almunia*  
*Vice-President*