

## **INTERNATIONAL ENERGY UPDATE**

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**7 April 2010** - Électricité de France ("EDF") recently committed to the European Commission to take steps to allow greater competition in the French electricity market. The announcement was intended to address concerns raised by the Commission, in December 2008, relating to EDF's anti-competitive behaviour – *i.e.*, signing large consumers to long term exclusive supply agreements and preventing customers from reselling to the market. The principal commitments recently made by EDF to the Commission are the following.

- (i) An average of 65 percent of contracted electricity with large customers will return to the market for competitive bidding each year;
- (ii) Future supply contracts with large customers will not exceed 5 years unless they include an "opt out" clause which may be exercised by the customer at no cost/penalty;
- (iii) Supply contracts will be offered on a non-exclusive basis; and
- (iv) Resale of electricity by customers will no longer be prohibited.

Clearly these commitments are a welcome development for the French electricity market. However, the test will be in their actual implementation. According to the Commission release EDF will be given "flexibility" to meet the 65 percent average over the lifetime of this agreement – *i.e.*, 1 January 2020. Moreover, the elimination of non-exclusivity in supply contracts only holds meaning where there is a real and competitive market for customers to alternatively source energy. Finally, the lifting of the resale ban also holds dubious value to consumers since most resales will be made back to EDF or facilitated through EDF. Consequently, although the announcement is most certainly a positive step towards competition the extent of its actual impact remains to be seen.

Under the terms of the Commission agreement EDF must comply with these commitments until at least 1 January 2020 unless its share in the electricity market drops below 40 percent in the interim. EDF is required to send annual reports to the Commission outlining and verifying its compliance with its market opening. In the event EDF breaks any of its promises with the Commission, it can be subject to a penalty of up to 10 percent of its annual revenues.

Up until November 2004, EDF was a government corporation thereafter transforming itself into a limited liability corporation under civil law. The French Government, however, still retains nearly 85 percent ownership in EDF which generates almost all of its electricity supply from nuclear facilities.