

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
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ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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EUROPOS BENDRIJŲ TEISINGUMO TEISMAS  
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
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EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Joined Cases C-128/03 and 129/03

*AEM SpA, AEM Torino SpA v. Autorità per l'energia elettrica e per il gas and Others*

**AN INCREASED CHARGE FOR A TRANSITIONAL PERIOD FOR ACCESS TO  
AND USE OF THE ELECTRICITY TRANSMISSION SYSTEM IN ITALY FOR  
HYDRO AND GEOTHERMIC ELECTRICITY PRODUCERS IS NOT STATE AID  
PER SE IN FAVOUR OF THOSE COMPANIES NOT SUBJECT TO THE  
INCREASED CHARGE**

Directive 96/92/EC concerning common rules for the internal market in electricity<sup>1</sup> was transposed in Italy by Legislative Decree No 79/1999.<sup>2</sup> For access to and use of the national electricity transmission system, that decree provides for payment to the system operator of a charge, the amount of which is determined by the Electricity and Gas Authority (the AEEG).

In 2000, two decisions of the AEEG<sup>3</sup> and a ministerial decree<sup>4</sup> imposed on undertakings generating and distributing electricity from hydroelectric or geothermal installations an increased charge which is for a transitional period and progressively reduced. According to the national court, that increase is intended to offset the undue advantages created for those undertakings and the competitive imbalances which arose in the first period of liberalisation of the electricity market (2000-2006).

Having challenged that increase to no avail before the Tribunale amministrativo regionale per la Lombardia, AEM SpA and AEM Torino SpA lodged appeals before the Consiglio di Stato, which asked the Court of Justice of the European Communities whether the increased charge

<sup>1</sup> OJ 1997 L 27, p. 20.

<sup>2</sup> *Gazzetta ufficiale della Repubblica italiana*, No 75 of 31 March 1999, p. 8.

<sup>3</sup> Decisions Nos 231/00 and 232/00 of the AEEG of 20 December 2000 concerning determination of the increased charge in respect of electricity generated by hydroelectric and geothermal installations for access to and use of the national transmission system for 2000 to 2006, Ordinary Supplement to *Gazzetta ufficiale della Repubblica italiana* No 4 of 5 January 2001, p. 13.

<sup>4</sup> Decree of the Ministro dell'industria, del commercio e dell'artigianato of 26 January 2000 on the determination of the general revenue charges of the electricity system, *Gazzetta ufficiale della Repubblica italiana*, No 27 of 3 February 2000, p. 12.

constitutes State aid regulated by the EC Treaty and whether it is compatible with Directive 96/92/EC which prohibits all discrimination between users of the national electricity transmission system.

#### *The nature of the aid*

The Court of Justice points out first that State aid includes not only subsidies but also measures which, in various forms, mitigate the normal burdens on the budget of an undertaking. However, the concept of aid does not encompass measures creating different treatment of undertakings in relation to charges where that difference is attributable to the nature and general scheme of the system of charges in question.

The Court notes that the increased charge is for a transitional period, progressively reduced and intended to offset the advantages created for undertakings generating and distributing electricity from hydroelectric or geothermal installations by the liberalisation of the market in electricity. Consequently, according to the Court it constitutes different treatment of undertakings in relation to charges attributable to the nature and general scheme of the system, which is not therefore State aid per se within the meaning of the EC Treaty.

However, AEM and AEM Torino also claimed that the increased charge is an integral part of the schemes of State aid to finance the stranded costs of electricity undertakings and to support new installations using renewable energy sources.

In the absence of sufficiently specific information, the Court does not rule on that question, but cites case-law to the effect that the method by which an aid is financed may render the entire aid scheme incompatible with the common market. Therefore, if the increased charge is an integral part of an aid scheme in the sense that the revenue from the increase is necessarily allocated for the financing of the aid, the increase must be considered together with that scheme.

#### *The rule of non-discriminatory access to the system*

Directive 96/92/EC prohibits all discrimination between users of the national transmission system. The Court notes that the principle of non-discrimination precludes different treatment of comparable situations and like treatment of different situations.

In this case, the Court considers that Directive 96/92 does not preclude a national measure such as the Italian measure, because it treats differently situations which are not comparable, but that it is, however, a matter for the national court to satisfy itself that the increased charge does not go beyond what is necessary to offset the advantage created for undertakings generating and distributing electricity from hydroelectric and geothermal installations following implementation of the directive.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR DE EN IT*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell*

*Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*