

Competition Act 1998 Decision (Chapter II case)

10 February 2004

THE GAS AND ELECTRICITY MARKET AUTHORITY'S ("THE AUTHORITY") DECISION UNDER THE COMPETITION ACT 1998 THAT UNITED UTILITIES ELECTRICITY PLC HAS NOT INFRINGED THE PROHIBITION IMPOSED BY SECTION 18(1) OF THE ACT WITH REGARD TO ITS INSPECTION REGIMES

Introduction

On 29 January 2003, the Authority received a complaint alleging that United Utilities Electricity plc (UU) was abusing its dominant market position through the application of its inspection regime for the provision of contestable elements of connections work to its network. It was alleged that UU was acting in a discriminatory manner contrary to Chapter II of the Competition Act 1998 (the Act). In particular it was alleged that while sub-standard works undertaken by the complainant, and identified by UU on inspection, had to be rectified before the asset was energised and adopted, similar sub-standard works undertaken by UU's affiliated connections business, United Utilities Networks (UUN) were being energised without rectification and the delays associated with such works. The complainant's allegations concerned the period between August 2002 and January 2003.

The Authority has taken a decision that, on the evidence before it, UU has not infringed the prohibition contained within Chapter II of the Act by engaging in such discriminatory behaviour. This document is a summary of the Authority's conclusions.

Background

UU is a Distribution Network Operator (DNO) based in the North West of England. UU's distribution service area includes towns and cities such as Manchester, Blackpool and Preston. Under the Electricity Act 1989 a DNO has a statutory obligation to provide a connection within its distribution service area.

Following a consultation undertaken by the Office of Electricity Regulation (OFFER) in December 1995, DNOs opened a limited number of areas of connection work to competition. These works were termed contestable and could be undertaken by and approved Independent Connection Providers (ICPs). The outstanding connection services remained with the DNO and were termed non-contestable, and include:

- determining the point of connection to the distribution network;
- upstream reinforcement;
- diversion works;
- statutory use of wayleaves (compulsory purchase powers); and
- connection to the existing DNO off-site network.

Once an ICP has completed the necessary works to provide the contestable elements of a connection, while procuring the non-contestable works from the DNO, the DNO will energise and adopt these assets and these will form part of the DNOs distribution network, upon completion of the works. However, before the DNO adopts any assets, they will undertake an inspection of the works undertaken by an ICP or an affiliated

connections business to ensure safety and installation of the asset guidelines have been adhered to. The relevant DNO safety requirements and installation guidelines are provided to all ICPs in the form of the appropriate Codes of Practice, Engineering Specifications and Engineering Policy Documents applicable to the relevant activity.

The Authority's Investigation

Having reviewed the allegations raised by the complainant the Authority has conducted enquires with regard to the inspection regimes in operation within the UU distribution service area and the monitoring of these regimes. These enquiries have taken the form of information requests made on an informal basis and subsequent detailed analysis of the information received.

UU has confirmed that within its distribution service area, two inspection regimes operate:

- a master policy which applies to all connections works undertaken in the UU distribution service area by either UUN or other ICPs; and
- an additional policy applied by UUN to its sub-contractors whether they are undertaking works within the UU distribution service area, or another DNO area.

The master policy is outlined within a document entitled "Non Norweb Distribution Constructed Assets". This document states that the master inspection policy is based upon a contractor's experience and performance. Subject to satisfactory completion of works to the standards outlined within UU documents, the inspection regime undertaken upon a contractor or subcontractors will be relaxed. Table 1 of the Non Norweb Distribution Constructed Assets document outlines the relevant benchmarks for each level of the inspection regime.

UU have stated that UUN are subject to the lowest level of inspection due to their undertaking satisfactory work for UU over a period exceeding 4 years. The complainant remains on the initial level (and therefore more vigorous regime) of inspection as they are new entrants into the market place.

The Authority was also provided with information about the monitoring of the inspection regimes and the processes in place to address any works that have been found to be below the required standards. All monitoring reports where problems were identified were provided to the Authority for the period August 2002 to January 2003. These monitoring reports included all reports for UUN, the complainant and other ICPs undertaking work within UU's distribution service area. The monitoring reports highlighted that in all cases where works were found to be sub-standard, the relevant ICP or UUN were required to take corrective action and, where practical to do so before the assets were energised. None of the evidence suggested that any works carried out by UUN which were found to be sub-standard on inspection were energised before corrective action was taken.

The Authority's Decision

The Authority considers that any difference in the application of the inspection regime can be objectively justified by differences in the past performance of connections

businesses. The Authority does not consider that the facts support the allegations made by the complainant, that sub-standard works undertaken by UUN were not subject to rectification before energisation took place.

The Authority has therefore concluded that they have no evidence to suspect that UU has been discriminating between works undertaken by an ICP or UUN when undertaking inspections of these works.

Consequently the Authority is not satisfied that it has reasonable grounds for suspecting that UU has infringed the Chapter II prohibition of the Act.

In reaching this decision it has not been necessary for the Authority to reach a definitive answer concerning the definition of the market or whether UU are dominant in this market.