

**EU: Commission Sends Statement of Objections to Gazprom for Alleged Abuse of Dominant Position \***

On 22 April 2015 the European Commission sent a Statement of Objections to Gazprom informing it that some of its business practices in Central and Eastern Europe may be deemed as breaching the EU competition law and, particularly, as abusing its dominant position in the relevant market. The issuance of the Statement of Objections is a result of an unofficial investigation conducted by the Commission in September 2011 in premises of undertakings active in the supply, transmission and storage of natural gas in several Member States. Following the inspection, on 4 September 2012 the Commission announced the opening of formal proceedings against Gazprom pursuant to the relevant antitrust provisions, concerning alleged abuse of its dominant position. The Statement of Objections refers to business practices which Gazprom applies in eight Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia), in which it is the main supplier of natural gas, with market share exceeding 50% (in some states even up to 100% of the relevant market).

According to the preliminary view of the Commission, Gazprom is breaching EU competition law by adopting an overall strategy which leads to the partitioning of Central and Eastern European natural gas markets. Its anticompetitive practices are divided into three main categories. The first one refers to several clauses Gazprom includes in its contracts with wholesalers and certain industry customers in all the above Member States, such as export ban clauses, destination clauses (according to which the customer must use the purchased natural gas only in a specific area), requesting wholesalers to obtain Gazprom's approval for exports or refusing to change the location to which natural gas should be delivered under certain circumstances. Such clauses according to the Commission constitute territorial restrictions and measures to partition the market and, as such, are considered as anticompetitive.

The second business practice preliminarily considered by the Commission to constitute abuse of dominant position is the pricing policy Gazprom applies to Bulgaria, Estonia, Latvia, Lithuania and Poland. According to this policy, the price of the natural gas Gazprom sells is linked to a number of oil products. Indexing a product's price to oil (or other) products is not considered per se illegal, however, in this particular case, it seems that this pricing method has largely favoured Gazprom over its customers.

Finally, the Commission is concerned that Gazprom has abused its dominant position in Bulgaria and Poland by making the supply of natural gas conditional upon obtaining certain infrastructure-related commitments by the wholesalers. In Bulgaria, such condition has been the participation of the wholesaler in a large-scale project of Gazprom (the South Stream pipeline), despite its high costs and its uncertain economic outlook, whereas in Poland the condition has been maintaining Gazprom's control over investment decisions concerning one of Poland's key transit pipelines, which could allow natural gas from other suppliers to enter the Polish market.

The issuance of the Commission's Statement of Objections against Gazprom was published at the same time with the confirmation, on 21 April 2015, that Commission's officials made in March 2015 two unannounced inspections in premises of companies which are active in the energy sector. The first one took place in Spain and concerns an undertaking active in the production, transmission and trading of the biofuel ethanol. The Commission was concerned that the price benchmarks had been influenced by anticompetitive practices. This particular inspection follows inspections conducted by the Commission and the EFTA Surveillance Authority in March 2013 in the sectors of crude oil, refined oil products and biofuel and inspections carried by the Commission in the biofuel sector in October 2014. The second one concerns undertakings active in the production and trading of bioethanol, both as a biofuel additive and as ingredient for the production of beverages, pharmaceutical products, chemical products or cosmetics. The investigation aimed at clarifying whether producers and/ or traders of bioethanol participated in agreements or concerted practices aimed at fixing prices or sharing markets and customers.

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\* (this document does not constitute legal advice)