

OPENING THE MARKET FOR ADVANCED MONITORING OF ELECTRICITY CONSUMPTION IN ITALY

Giulia Battista¹

Keywords: Italian Competition Authority; Antitrust; Abuse of Dominant Position; Exclusionary Conduct; art. 102 TFUE; Commitments; Metering; Electric Consumption

1. INTRODUCTION

On 6th September 2016, the Italian Competition Authority (hereinafter, ICA) closed proceedings accepting and rendering legally binding the commitments submitted by Enel S.p.A. and e-distribuzione S.p.A. (hereinafter, e-distribuzione or “ED”; jointly, the Parties or “ENEL”).

The investigation was launched in December 2015 in order to ascertain possible restrictions of competition related to e-distribuzione’s behaviour as an electricity distributor (DSO). Specifically, the aim was to ascertain an exclusionary conduct in the related downstream market for advanced monitoring of electricity consumption, in violation of art. 102 TFUE.

2. COMPETITION CONCERNS

The case was launched following a competitor’s complaint informing the ICA of various conducts implemented by e-distribuzione which could possibly lead to the competitor’s exclusion from the market for advanced monitoring of electricity consumption, in the local areas where e-distribuzione holds the concession as DSO (which totally amount to 85% of the Italian distribution system, both in terms of energy distributed and of number of PODs²).

In particular, it resulted that e-distribuzione:

¹ Italian Competition Authority.

² Points of Delivery.

- i) had in many cases detached the competitor's led-based devices³ from the clients' meters, putting forward security reasons which were found to be not entirely justified;
- ii) had denied physical access to the consumer's meters to install the competitor's led-based devices when the meters were covered by some sort of showcase or grill which required the DSO's intervention to be opened ("sealed" meters);
- iii) had denied, not responding to requests sent by the complainant, the competitor's access to the technical elements and know-how necessary in order to reproduce an "in-home device" (IHD) for the collection of detailed electricity consumption data directly from the clients' meters via power line.

In the ICA's view, the whole conduct could foreclose downstream competitors from accessing essential inputs. Therefore, it could reduce competition in the market for advanced monitoring of electricity consumption, possibly extending the dominant position held by e-distribuzione in the upstream markets of electricity distribution and "traditional" metering to downstream segments.

3. REGULATORY FRAMEWORK AND RELEVANT MARKETS

The market for the advanced monitoring of electric consumption is a new and innovative field, arising from consumers' interest for more detailed consumption data than what they can extract from their electricity bill.

This extended knowledge over their consumption patterns can be useful for customers in order to learn how to reduce their electricity intake (that is, for energy efficiency purposes), or to interact with the electronic devices present in the house (so called "domotics" or "home automation"). In perspective, the detailed (and close to real-time) monitoring of electricity consumption can also enable the demand's involvement in energy markets, with benefits for both consumers (for example, in the form of more tailored tariffs) and the entire electric system, being part of the global transition towards *smart(er) grids* and *smart(er)* ways of consuming electricity.

The relevant markets in the electricity industry were identified to be: *a.* electricity distribution and *b.* "traditional" metering for billing purposes, upstream; *c.* advanced monitoring of electricity consumption and *d.* electricity selling, downstream.

³ A so called "led-based device" for the advanced metering of electricity consumption reads the natural flashing of the meter to collect consumers' detailed consumption data, while a so called "in-home device" (IHD) manages to receive these data directly from the meter via the power line. Before the commitments submitted by ENEL in these proceedings, the sole IHD in Italy was the so-called "Smart Info" developed by e-distribuzione and distributed in the context of some pilot projects in different Italian cities (L'Aquila, Isernia).

The distribution of electricity in Italy is a local monopoly (in Italy, over a territory corresponding to one or more municipalities – the so called “Comuni”). Moreover, the DSO, according to regulatory provisions, is also responsible for the “traditional” metering activity carried out for billing purposes.⁴

E-distribuzione, a subsidiary fully owned by Enel S.p.A., distributes more than 85% of electricity throughout the national territory and therefore can be considered to hold a dominant position both in each local (“provincial”) market and at a national level. ED also belongs to a fully integrated Group (the ENEL Group) which operates in any field of the Italian energy market.

The advanced monitoring of electricity consumption is a new service, offered by electricity sellers or independent companies on a competitive basis.

Finally, the selling of electricity to final customers, carried out in Italy on a competitive basis,⁵ could also be affected by the conducts under scrutiny. In fact, advanced metering systems and services can represent (and, hopefully, will increasingly represent in the future) a competitive tool for product differentiation in the market.

4. COMMITMENTS

During the investigation, e-distribuzione and Enel S.p.A. submitted commitments in order to address the competition concerns identified by the ICA in the opening of the proceedings.

On 18th May 2016, the ICA launched the so called “market test” over the commitments, in order to collect comments from stakeholders. The comments received were in general extremely positive, even if the participants in the market test highlighted some specific aspects of the commitment package which could raise some problems and therefore to be improved by ENEL. Most of the improvements required were implemented by the Parties which, on 19th July 2016, submitted a final version of the commitments.

The package of remedies included different measures aimed at promoting the development of the services for advanced metering of electricity consumption on a competitive basis.

⁴ This is not the case in other European countries, such as Great Britain or Germany, where the metering activity is carried out by electricity sellers or by third independent companies.

⁵ The liberalization process in the electricity sector, started in Italy in 1999 by the so-called “Bersani Decree” (d. lgs. n. 79/99), has concerned the production and selling of electricity on the free market, mainly to large industrial customers (while an administrative regime still exists, the so-called “Maggior Tutela”, for household consumers).

In particular, firstly, e-distribuzione committed to stop any unnecessary detachment of other companies' led-based devices from the customers' meters. Moreover, it undertook to implement a specific flow of information in order to promptly inform the service providers about the cases in which the devices are removed for technical mandatory reasons (for example, when a physical substitution of the meter is required). For this purpose, e-distribuzione will create a specific "repository" in which any operator will be able to verify if these removals concern some of their customers. Moreover, ED will implement a specific training activity for its operating staff regarding the new procedures to be followed, in order to minimise the interruption of the advanced measurement service offered by competitors via led-based devices.

Secondly, as far as the problem of "sealed" meters is concerned, e-distribuzione committed to equip the meters with a specific device, the so-called ES card. The latter will enable to export the electric signals outside the "cage," free of charge for customers, in order to allow the demand for smart metering services also by this category of customers.

Finally, to address the concern about the duplicability of IHDs by independent operators (different from the DSO), e-distribuzione committed to release a so-called "*Original Equipment Manufacturer*" Module ("OEM"), incorporating the technology present in "Smart Info" at a miniaturised level. It can also be folded into a competitor's IHD, enabling the resulting device to collect the detailed consumption data of the customer directly from the meter via power line. As an alternative, according to the measures envisaged in the commitments package, interested operators can also ask to buy the integrated device "Smart Info," which will be offered de-branded from any ENEL logo. Both the OEM and the Smart Info will be priced at cost level by e-distribuzione, where the specific comparison between the offered prices will be monitored by the ICA throughout the compliance process.

As to Enel S.p.A., the parent company committed to monitor the implementation of the measures proposed by ED, guaranteeing that identical conditions will be applied in the supply of the OEM and of the Smart Info both to ENEL subsidiaries and to third parties.

5. CONCLUSION

The ICA deemed these commitments suitable and proportionate to address the competition concerns related to e-distribuzione's behaviour on the relevant markets. Moreover, it deemed them particularly fit to promote the development of a competitive market for advanced metering services in Italy, with important benefits for final energy consumers and for the electric system as a whole.

The commitments will remain in force until the completion of the substitution of the actual electronic energy meters with the so-called “second generation” (or 2G) electronic meters.⁶ The latter, among other functionalities, should enable a more direct access to consumption data and allow interoperability with external third-party devices.

⁶ Pursuant to the regulatory measures provided for by “DCO n. 486/2015” and subsequent acts of the Italian Energy Regulator (AEEGSI).