

Previous Exams for JUR1310 and JUR5310 - EC Competition Law

Autumn 2012

In Westland, a Member State of the European Union, electric power was for the most part generated in gas-fired and coal-fired power plants. The market consisted of five major producers, of approximately equal size. In 2011, the trade association West-power took an initiative to phase out generating capacity, as the market struggled with over-capacity and low prices. On a general meeting, the producers reached agreement on the phasing out of three production plants, the owners of which should be compensated. In addition, the producers agreed on the establishment of a consortium which should be devoted to the development of green power (i.e. wind-power). The consortium was established as a joint venture ("West-wind") where the parties held 20 % each.

Question 1:

Discuss whether the agreement on capacity reductions is contrary to Article 101.
(Not to be answered by MA-students)

Give an overview of what factors are decisive in the assessment of the consortium under Article 101.

The power producers also controlled the national electricity grid in Westland (through a separate undertaking; West-Grid in which the power producers held equal shares), as well as power cables connecting the country with other Member States. Imported electricity from neighbour countries had during the financial crisis put pressure on the power prices in Westland. The owners agreed on instructing West-Grid to introduce a particular tariff on imported electricity, as well as shutting down one of the cables.

Question 2:

Discuss whether the agreement is contrary to Article 101, and whether the conduct can be regarded as an abuse of dominant position on the part of West-Grid.

Additional facts & questions for MA-students:

The Westland Government supported the idea of phasing out capacity, and established a fund which would support capacity reductions according to the plan introduced by West-power. Reductions outside the scheme of West-power would not be eligible for support.

Question 3 (to be answered by MA-students only)

Discuss whether the involvement of the Westland authorities is contrary to the State action doctrine.

Under what circumstances may the Merger Regulation apply to a joint venture like the West-wind consortium?

BA-students shall only answer Questions 1 & 2. MA-students to answer all questions except for part 1 of Question 1.