

SUMMARY OF RESOLUTION S/0213/10 *IBERDROLA SUR*

On 23 December 2009 the CNC received a complaint filed by Gas Natural Servicios SDG, S.A. and Unión Fenosa Comercial, S.L. against Iberdrola Comercialización de Último Recurso, S.A.U. (IBERDROLA CUR), Iberdrola, S.A. (IBERDROLA) and Iberdrola Distribución Eléctrica, S.A. (IBERDROLA DISTRIBUCION) for transferring customer contracts from the “distributor of last resort” to the deregulated distributor without obtaining the consumer’s express consent required by the regulations governing the sector.

With the implementation as from 1 July 2009 of the electricity supplier of last resort arrangement, some of the consumers who until then were entitled to the regulated tariff lost that right and had to be charged the market rate.

This group of consumers involved customers who were connected to the low voltage grid with a contracted power in excess of 10KW and to those high voltage customers who, despite having been in the unregulated market since 1 July 2008, still did not have a supply contract in force and continued consuming electricity.

In order to avoid automatic cut-off of electricity to customers without a contract in the unregulated market, the regulations allow them to be supplied on an interim basis by the distributors of last resort (*comercializadores de último recurso*; hereinafter CUR) of the corporate groups that own the distribution network that serves those customers.

The price to be charged to customers in this situation was subject to automatic phased increases (5% quarterly, until reaching 20%), as an incentive to shift to the market rate by contracting supply with distributors, culminating in a supply cut-off on 31 December 2010 (deferred twice, until 31 December 2011 and 31 December 2012).

On 24 February 2012 the CNC Council issued its resolution on the case, finding that the following had been proven:

- IBERCUR undertook supply of 470,791 consumers in this situation, who were automatically transferred from the distributor in its corporate group, as stipulated by the regulations.
- Some 268,001 of those consumers were subsequently transferred automatically from IBERCUR to the Group's market distributor (IBERDROLA), without obtaining their express consent.

This conduct is contrary to Additional Provision One of Order ITC/1659/2009, which required that the consumer's express consent be obtained for the change of supplier. As such, it involved infringement of a legal provision aimed at regulating competition between the operators in the retail electricity supply market, which qualifies the conduct as unfair under article 15.2 of the Spanish Unfair Competition Act (*Ley de Competencia Desleal*).

These actions generated an important percentage increase in consumer loyalty to IBERDROLA, indicative that the conduct led to a reduction in the size of the market that could be reasonably captured by other distributors or, what amounts to the same thing, to a strengthening of entry barriers. Therefore, the action produced a distortion of free competition.

Lastly, taking into account the legal and economic context in which the conduct with which it was charged occurred (the deregulation of the retail market for the supply of electricity), the group at which it was directed (small and medium-size enterprises) and the service affected (a basic input for businesses and an essential service for domestic consumers), there was no doubt that Iberdrola's conduct has affected the public interest.

Therefore, the CNC Council concluded that all of the requirements were met for classifying the conduct as distortion of free competition by means of unfair acts, which is prohibited by article 3 of the Competition Act, and levied a fine of 10,685,000 euros on IBERDROLA S.A., IBERDROLA CUR S.A.U. and IBERDROLA GENERACION S.A.U.