

Legal challenges to EC decision to allow UK subsidies for new nuclear

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The deal



- UK have guaranteed EDF an index-linked CfD price of £92.50 - twice the current market price of electricity - for each megawatt-hour over a 35-year locked-in contract period.
- Subsidies will be funded through levies on all consumer energy bills.
- Treasury has offered a credit guarantee to underwrite up to £10bn of debt on the project.

UK nuclear subsidies



- UK classifies the levy for CfDs as a tax.
- But Almunia EC report clearly refutes UK argument that the Hinkley CfD is not a subsidy.
- UK argue that ‘subsidies’ aimed at 4 key EU energy priorities: Security of supply, diversity of generation, decarbonisation, electricity price stability and affordability ...
- UK claim state aid support is needed to address ‘market failure’

EC decision on UK state aid



- Commission concluded that the ‘modified’ UK measures for Hinkley Point nuclear power plant are compatible with EU rules.
- Interesting - as there have been no real ‘modifications’.

Why is it so important?



- EC decision sets an important precedent and will have significant consequences across Europe.
- Directly informs the future direction of EU energy policy.
- Annually, billions of euros rest on the result of this policy appraisal.
- Sends important signals internationally.

International impact



- Europe can overestimate its role in setting global norms - but many countries still look to Europe as a laboratory for low-carbon transition.
- EU structural energy reform inform the kind of robust international energy regimes needed to combat ramping climate change.

Austrian legal challenge



- Austria, quite properly and transparently, signals and declares a clear intention to challenge through the EC Courts.

UK Threatens Austria



- The UK will take ‘every opportunity to sue or damage Austria’ if Vienna does not drop a legal challenge.
- ‘The U.K. will take every future opportunity to sue Austria in areas that harm or that have strong domestic political implications’.

Vijay Rangarajan, UK Senior Foreign Office official

Sending an offer they cant refuse



- Austrian challenge will have ‘negative effects on bilateral relations, because there would be strength of feeling, right up to the PM’.

Austrian response to UK



- ‘We won’t let ourselves be intimidated’.
- ‘No subsidies for atomic power.’

Austrian Environment Minister Andrae Rupprechter

Its not cricket!



- ‘The UK has obviously started, including the use of the UK Embassy in Vienna... with systematic preparation of counter measures to damage Austria’.
- UK has threatened to ‘sue or hurt’ Austria in areas that would have a ‘strong domestic political impact’.

Martin Eichinger, Austrian Ambassador in London

DECC refuses access to information on key reports

- Reports by KPMG on potential distortions to competition; by Oxera on market failures, proportionality and potential distortions of competition; a study by Pöyry on potential distortions to the internal market and alternatives to new nuclear; report by Redpoint on the evolution of the UK electricity sector; & details of the Cost Discovery and Verification process, compiled by KPMG and LeighFisher

German-UK renewable energy challenge



- Set of key German and UK renewable energy companies and associations impacted by the decision.

EC DG Competitions initial view



- Deal provides utmost certainty of a stable revenue stream under lenient conditions by eliminating market risks from the commercial activity of nuclear electricity generation for the very long 35-year Contract length.
- Seems incompatible with EU State Aid rules, and the proposed Investment Contract will provide EDF with a clear selective advantage.

So what happened?



- Maybe EC don't want to be seen to be determining UK energy policy.
- Have EC made the decision because of Eurosceptic undercurrents in the Coalition - knowing that their decision has substantial flaws, especially in terms of 'energy market distortion'?
- EC inviting a legal challenge?

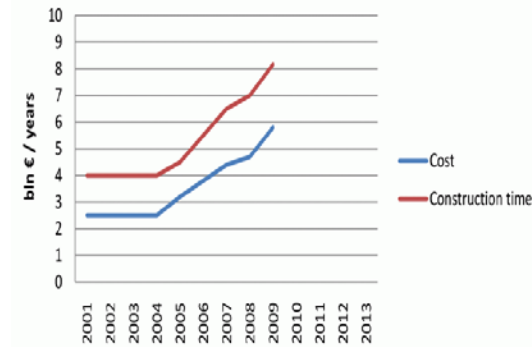
Targeted State Aid



- Investment Contract and Loan Guarantees specifically designed to develop nuclear at the expense of other low carbon investments.
- This level of financial support and length of contract are not available to other low-carbon technologies.
- Substantial repercussions on pan-EU trade and competition and state aid regimes.

Nuclear risk

Olkiluoto 3 cost & lead time



- Given the risk profile of this project, the fees for the Loan Guarantees being offered to EDF by the UK government are well below the commercial rates - given the scale of risk in the light of current experience of constructing an EPR.

Market competition failure



- UK plans to provide operating State Aid through price support mechanism to guarantee profitability are not compatible with EU State Aid rules.
- The proposed Investment Contract will provide EDF with a clear selective advantage.

Renewable evolution



- Low carbon energy is a growing economic sector with huge potential for job creation.
- To limit this diversity through particular State Aid support of nuclear power at the expense of other, potentially more flexible, safe, productive, cost-effective and affordable technologies seems unwise.

Likelihood of successful outcome



- Legal challenges to the EC decision have arisen because the price support mechanism to guarantee profitability is incompatible with EU State Aid rules, distorts the EU energy market, contradicts EC state aid regulations, and the proposed Investment Contract provides nuclear with a clear selective advantage.
- It's likely that the challenges will succeed.

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Thank You

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