

Bloomberg

E.ON to Appeal Spain's Conditions for Endesa Takeover

By Peter Dinkloh

Aug. 1 (Bloomberg) -- E.ON AG, Germany's biggest utility, plans to appeal Spanish conditions on its proposed 26.9 billion-euro (\$34 billion) takeover of Endesa SA, increasing the scrutiny of the decision.

E.ON will file an appeal with the Spanish Industry Ministry next week, the Dusseldorf-based company said today in an e-mail. The utility has said it sees "no justification" for the conditions. The European Commission, which approved the merger in April, yesterday said it will investigate Spain's decision.

The 25-nation European Union and E.ON are questioning whether Spain is unduly protecting its power industry as EU energy markets open to full competition. The Spanish regulator ordered E.ON to sell a third of Endesa's power plants in Spain because it said they are "strategic" for the country's energy supply.

"The conditions are too tough for E.ON to easily accept them," said Frankfurt-based Kepler Equities analyst Ingo Becker, who has a "buy" rating on the stock. "The appeal also sends a signal to the EU to act against the conditions."

E.ON is vying with Barcelona-based Gas Natural SDG SA, Spain's largest gas supplier, for control of Madrid-based Endesa as both seek to gain 22 million power customers and about 45,900 megawatts-worth of power plants worldwide.

E.ON shares fell 1.38 euros, or 1.5 percent, to 93 euros in Frankfurt.

Asset Sales

Spain gave the regulator powers to veto the takeover three days after E.ON made its bid on Feb. 21. The EU reacted by ordering Spain not to bar foreign companies from taking over Endesa and empowering EU Competition Commissioner Neelie Kroes to block Spain from using the veto powers.

Under EU rules, the commission has exclusive antitrust authority to review E.ON's offer. The commission announced yesterday it is reviewing whether Spain broke EU law by requiring E.ON to sell assets.

The 19 conditions imposed by the Spanish energy regulator included E.ON having to cede the management of nuclear plants in which Endesa has a stake and sell supply plants and networks in Spain's Balearic and Canary islands. E.ON must also sell the Asco-1 atomic reactor and three coal-fired units.

The appeal addresses in particular the regulator's "conditions regarding asset disposals," E.ON said in its statement.

"E.ON has really good cards to challenge these decisions," Christopher Kummer, director of the Institute of Mergers, Acquisitions and Alliances at Webster University in Vienna, said in a telephone interview.

Iberdrola Appeal

The EU's approval of the deal has also been challenged. Iberdrola SA, Spain's second-largest power company, today said it is appealing the unconditional EU approval of E.ON's bid for Endesa at the European Court of First Instance in Luxembourg.

Such legal tactics aim ``to make life difficult for your competitors," Kummer said.

The company argues that any deal would have negative effects on competition in Spain, said a spokesman for Iberdrola who declined to be identified. If Gas Natural acquires Endesa, it has agreed to sell assets in Spain, France and Italy worth as much 9 billion euros to Iberdrola. The commission hasn't been informed of Iberdrola's appeal, spokesman Michael Mann told reporters.

EU countries are ending state control and monopolies on their national energy markets and allowing companies to act freely on their markets with the aim of lowering energy prices and make companies more competitive.

The commission earlier this year also warned France and Poland to halt interference in proposed cross-border mergers in energy and banking.

To contact the reporter on this story: Peter Dinkloh in Frankfurt at pdinkloh@bloomberg.net

Last Updated: August 1, 2006 12:17 EDT