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The European Commission opens antitrust proceedings against Gazprom

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On 4 September, the European Commission announced the initiation of an antitrust investigation against Gazprom. The primary complaint relates to the abuse of its dominant position on the gas market, mainly in Central Europe, by means of (1) limiting the freedom of movement of gas between EU member states, (2) preventing attempts to diversify gas supplies to EU countries, and (3) imposing unfair prices on contractors.The European Commission's actions were preceded by an investigation, initiated in September 2011, involving the search for and examination of documents in 20 EU gas companies affiliated with Gazprom (both subsidiaries and joint ventures), as well as in Gazprom's contractors and transmission operators in some EU countries.

Under EU law, Gazprom is obliged to respond to the complaints within four months, followed by an appropriate administrative procedure usually lasting 6-12 months, although this can be extended. In the event of a negative decision (finding an infringement of EU law), Gazprom may appeal to the EU's Court of Justice (in this case, the proceedings could in fact take up to two years).

Commentary

- The initiation of anti-trust proceedings against Gazprom sets a precedent in EU/Russian energy relations. It reaffirms the EU's determination to implement EU law, including the rules of the Third Energy Package, which provides for enhanced liberalisation of the EU's gas market. The move also meets the expectations of many buyers of Russian natural gas in Central Europe (such as Lithuania and Poland), who have been working to amend certain conditions of their contracts with Gazprom, especially concerning prices. It is possible that the EC's actions may be used by European companies as an instrument of pressure in their negotiations with the Russian monopoly on this issue.

- The opening of formal proceedings against Gazprom also demonstrates the European Commission's desire to play an increasingly important role in shaping energy policy within the European Union. This confirms the Commission's efforts to influence the negotiation of contracts for the supply of gas to the EU.

- The investigation being conducted by the European Commission, and in particular the high likelihood of a decision that EU competition law has been infringed, may have serious consequences for Gazprom. The company may be fined up to 10% of its total turnover during the year preceding the decision. However, it must be remembered that a decision by the European Commission would not automatically invalidate the existing contracts, and the long appeal procedure and the existing dependence of European countries on Russian gas supplies will make it difficult to force Gazprom to give up its current practices.

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