



## **A customer may submit a complaint against the operator of the national grid following a power failure**

*That complaint may not be dismissed for the sole reason that that final customer's installation is connected not to the national electricity system, but only to a regional system fed by the national system*

On 27 March 2015, a large-scale power failure at the Diemen substation (Netherlands), which is part of the high-voltage grid operated by TenneT TSO, left a large part of the province of Noord-Holland (North Holland) and a small part of the province of Flevoland without power for several hours. The power failure interrupted the transmission of electricity to the factory belonging to the company Crown Van Gelder BV, which carries out there, in Velsen-Noord (Netherlands), paper production. That factory is connected to the distribution system managed by Liander NV and is fed by the system operated by TenneT TSO.

Claiming that it had suffered damage as a result of the failure, Crown Van Gelder submitted a complaint before Autoriteit Consument en Markt (ACM (Consumer and Market Authority, Netherlands), the national regulatory authority, seeking a declaration that TenneT TSO had not done everything reasonably within its power to prevent power failures and that the grid design of the Diemen substation did not meet the legal requirements.

However, by decision of 30 April 2018, ACM declared Crown Van Gelder's complaint inadmissible on the ground that it did not have a direct relationship with TenneT TSO. Indeed, Crown Van Gelder's factory was not connected to TenneT TSO's grid, but only to that of Liander. Moreover, Crown Van Gelder had not concluded a contract with TenneT TSO and it received no invoices from that operator.

The College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), hearing an action against the decision of ACM, decided to refer a question to the Court of Justice on the matter. The referring court seeks clarification on the concept of 'any party having a complaint', within the meaning of the EU directive on the internal market for electricity.<sup>1</sup> More specifically, it asks whether the complaint of a final customer against the operator of an electricity system following a power failure in that system may be dismissed on the ground that that final customer's installation is connected not to that national system directly, but only to a regional distribution system fed by the national system.

In today's judgment, the Court recalls, first of all, that the competence of ACM, where it is called on to handle a complaint, is expressly subject to two conditions. First, the complaint must concern a transmission or distribution system operator. Second, the complaint must relate to obligations imposed on the system operator by Directive 2009/72. However, it does not follow from the wording of the directive that ACM's competence is conditional on the existence of a direct relationship between the complainant and the system operator.

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<sup>1</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55), Article 37(11).

Moreover, the Court notes that Directive 2009/72 aims to grant energy regulators the power to ensure the full effectiveness of consumer protection measures. Likewise, the directive requires Member States to ensure high levels of consumer protection, particularly with respect to dispute resolution mechanisms.

With regard to transmission system operators, the Court observes that the tasks and obligations imposed on them by Directive 2009/72 do not concern only those entities whose installation is connected to their system. Thus, they are required inter alia to operate, maintain and develop under economic conditions secure, reliable and efficient transmission systems. They are also required to ensure adequate means to meet service obligations, to contribute to security of supply through adequate transmission capacity and system reliability and to manage electricity flows on the system, taking into account exchanges with other interconnected systems.

The Court therefore concludes that the concept of ‘party having a complaint’ cannot be interpreted as involving a direct relationship between the complainant and the transmission system operator concerned by the complaint. Consequently, where it receives a complaint from a final customer alleging non-compliance with obligations imposed on transmission system operators by Directive 2009/72, ACM is not entitled to dismiss that complaint on the ground that the installation of that final customer is connected not to that transmission system directly, but only to a distribution system fed by it.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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