

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Cases COMP/B-1/39.388 — German Electricity Wholesale Market and COMP/B-1/39.389 — German Electricity Balancing Market

(Text with EEA relevance)

(2008/C 146/09)

1. INTRODUCTION

1. According to Article 9 of the Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽¹⁾, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

2. On 7 May 2008 the Commission adopted a preliminary assessment concerning alleged infringements of E.ON AG, Düsseldorf and its subsidiaries ('E.ON') on the German electricity wholesale and balancing markets. This document is a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003.
3. According to the preliminary assessment E.ON is, together with RWE and Vattenfall, collectively dominant on the German electricity wholesale market. The preliminary assessment expressed the concern that E.ON may have abused its dominant position according to Article 82 of the EC Treaty by withdrawing available capacity (deliberately not offering the production of certain plants which were available and economical to run) with a view to raising electricity prices to the detriment of consumers and by deterring third parties from making new investments in electricity generation.
4. According to the preliminary assessment E.ON is dominant on the market for secondary balancing energy in the E.ON network area, where the Transmission System Operator acts as a monopsonist. The preliminary assessment expressed the concern that E.ON may have abused its dominant position on the network by increasing its own costs with a view to favouring its production affiliate and passing the costs on the final consumer, and by preventing power producers from other Member States from selling balancing energy into the E.ON balancing markets.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

5. The parties subject to the proceedings do not agree with the Commission's preliminary assessment. They have nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003, to meet the Commission's competition concerns. The key elements of the commitments are as follows:

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

6. E.ON will divest the following generation capacity in Germany:
 - E.ON will divest wholly its shares in the run-of-river plants ÖKB/Inn (182,5 MW), Weser (42 MW), Inn (Nußdorf, Eggfling, Ering; together 102,2 MW) and Jansen (Trausnitz, Tanzmühle; together 5,1 MW),
 - E.ON will grant drawing rights for their whole remaining life-time (including possible extensions) in the nuclear power plants Gundremmingen B, C (643 MW), Krümmel (673 MW) and Unterweser (184 MW),
 - E.ON will divest wholly its shares in the lignite power plants Lippendorf (445,5 MW),
 - E.ON will grant a drawing right of 159 MW for the whole remaining life-time (including a corresponding right to participate in any new-build) in the lignite power plant Buschhaus,
 - E.ON will divest wholly its shares in the following hard coal plants: Rostock (256 MW), Zolling (449 MW), Farge (350 MW), Mehrum (345 MW) as well as Veltheim 2/3 (265,3 MW) and Bexbach (79,3 MW),
 - E.ON will divest wholly its shares in the gas fired power plants Robert Frank (491 MW),
 - E.ON will divest wholly its shares in the pump storage plants Erzhausen (220 MW) and Jansen (Kainzmühlsperre, Reisachhochspeicher; together 127 MW).
7. E.ON will also divest its Transmission System Business consisting of its 380/220 kV-line network, the system operation of the E.ON control area and related activities.
8. The commitments are published in full in English on the website of the Directorate-General for Competition at:
http://ec.europa.eu/comm/competition/index_en.html

4. INVITATION TO MAKE COMMENTS

9. The Commission intends, subject to market testing, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding.
10. In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'commercial secrets' or 'confidential'. Legitimated requests will be respected.
11. Observations can be sent to the Commission under reference number COMP/B-1/39.388 — German Electricity Wholesale Market and COMP/B-1/39.389 — German Electricity Balancing Market either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax ((32-2) 295 01 28) or by post, to the following address:

European Commission
Directorate-General for Competition
Antitrust Registry
B-1049 Bruxelles/Brussel
