

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/B-1/39.317 — E.ON gas

(Text with EEA relevance)

(2010/C 16/16)

1. INTRODUCTION

- (1) According to Article 9 of the Council Regulation (EC) No 1/2003 ⁽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 22 December 2009, the Commission adopted a preliminary assessment pursuant to Article 9(1) of Regulation (EC) No 1/2003 concerning alleged infringements of E.ON AG, Düsseldorf and its subsidiaries on the German gas markets ('E.ON').
- (3) According to the preliminary assessment E.ON is a dominant player on the gas transmission market(s) within its L-gas network and the NetConnect Germany network. E.ON is according to the preliminary assessment also a dominant player on the downstream gas markets for the supply of regional and local wholesalers as well as for the supply of large industrial customers.
- (4) The preliminary assessment expressed the concern that E.ON may have abused its dominant position according to Article 102 of the Treaty on the Functioning of the European Union ('TFEU') in the form of a refusal to supply by way of long-term bookings on E.ON's gas transmission system. E.ON has booked large parts of the available firm and freely allocable entry capacities on its gas transmission grid, which may lead according to the preliminary assessment to a foreclosure of competitors trying to transport and sell gas to customers connected to the E.ON grid and therefore may restrict competition on the downstream gas supply markets.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

- (5) E.ON does not agree with the Commission's preliminary assessment. It has 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 can be summarised as follows:
- (6) In a first step, E.ON proposes to release firm freely allocable entry capacities into its gas transmission grid by October 2010 ('Immediate Capacity Release') covering a capacity volume of 17,8 GWh/h. 10 GWh/h of the total released capacities are offered for H-gas capacities, 7,8 GWh/h for L-gas capacities. The relevant entry points for H-gas are (released capacity volumes in brackets):

- Waidhaus (3,469 MWh/h),
- Emden NPT (1,250 MWh/h),
- Dornum (500 MWh/h),
- Emden EPT (250 MWh/h),
- Eynatten/Raeren (2,250 MWh/h),
- Oude Statenzijl (500 MWh/h),
- Achim (171 MWh/h),
- Bocholtz (44 MWh/h),
- Oberkappel (364 MWh/h) and
- Lampertheim (1,200 MWh/h).

For L-gas, E.ON's commitment relates to the entry points:

- Emsbüren (2,193 MWh/h),
- Drohne (1,413 MWh/h),
- Steinbrink (187 MWh/h),
- Vreden (1,400 MWh/h) and
- Elten (2,565 MWh/h).

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Article 82 of the EC Treaty has become Article 102 of the Treaty on the Functioning of the European Union ('TFEU'). For the purposes of the Commission's preliminary assessment in this case and a potential decision according to Article 9(1), references to Article 102 TFEU should be understood as reference to Article 82 of the EC Treaty when appropriate.

- (7) In a second step, E.ON proposed to further reduce its overall share in the bookings of firm freely allocable entry capacity ('Long-term Reduction') in the relevant H-gas market area NetConnect Germany to 50 % by October 2015. For the L-gas network, E.ON proposes a further overall reduction of its booking share to 64 % by October 2015. E.ON may reach these thresholds by returning capacities to the TSO, by measures to increase the capacity in the grid or by entering into market area co-operations which increase the total volume of capacities into E.ON's grid. E.ON commits not to exceed these thresholds until 2025 ⁽¹⁾.
- (8) E.ON is not prevented from booking interruptible capacities which are not part of the commitments. E.ON is, moreover, not restricted with regards to short-term bookings (bookings with a duration of up to one year) under the conditions laid out in the commitments ⁽²⁾. E.ON may, moreover, as of October 2011 also book long-term capacities under the condition that E.ON's overall booking share decreases over time until reaching the thresholds of 50 % for H-gas and 64 % for L-gas by October 2015.
- (9) An independent trustee will be asked to supervise the fulfilment of these commitments by E.ON.
- (10) The commitments are published in full in German on the website of the Directorate-General for Competition at:
http://ec.europa.eu/comm/competition/index_en.html

4. INVITATION TO MAKE COMMENTS

- (11) The Commission intends, subject to the outcome of the market test, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding.
- (12) 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. In this context, the Commission asks interested parties to comment in particular on the following questions. Comments should, as far as

possible, be substantiated with a detailed reasoning, containing the necessary facts on which the comment is based and, if a problem is identified, a proposal for a solution of the identified problem:

- (a) The Immediate Capacity Releases are supposed to alleviate at least parts of the identified access problems to E.ON's transmission grid quickly. Does the proposed schedule for a release (as of October 2010), allow for a successful marketing of the entire capacities offered in the 'Immediate Release' in particular with a view of the short marketing period for these capacities of probably less than 6 months?
- (b) Do you have comments regarding the selection of the entry points at which E.ON offers to immediately release capacities and the released volumes at these points? In particular, are any of these entry points not eligible to allow (potential) competitors to effectively access E.ON's transmission grid?
- Third parties are invited to make comments also on all other aspects of the commitments.
- (13) Third parties' 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'. If your request for the protection of confidential information is legitimate, the Commission will ensure the protection of this information.
- (14) Observations can be sent to the Commission under reference number COMP/B-1/39.317 — E.ON gas either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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

⁽¹⁾ After 1 October 2025, E.ON may book such capacities without limitation except if the bookings are made very early in advance: Between 1 October 2015 and 1 October 2020, E.ON undertakes, with respect to the period from 1 October 2025 to 1 October 2030, to exceed the mentioned thresholds only by at maximum 5%. Between 1 October 2020 and 1 October 2025, E.ON commits, with respect to the same period (from 1 October 2025 to 1 October 2030), to exceed the mentioned thresholds only by at maximum 10%.

⁽²⁾ See paragraphs 5, 6 and 10 of the commitments text.