

**Final report of the Hearing Officer <sup>(1)</sup> in Case COMP/39.317 — E.ON Gas**

(2010/C 278/05)

The draft Decision presented to the Commission relates to the alleged abuse of a dominant position under Article 102 of TFEU by the German energy company E.ON AG and its subsidiaries E.ON Ruhrgas AG and E.ON Gastransport GmbH (hereafter collectively referred to as 'E.ON'). It expresses the concern that E.ON may have refused long-term bookings on E.ON's gas transmission system. The undertaking reserved for itself large parts of the available firm entry capacities on its gas transmission grid. These practices may lead to a foreclosure of competitors trying to transport and sell gas to customers connected to the E.ON grid, hence restricting competition on the downstream gas supply markets.

The Commission opened proceedings with a view to take a decision under Chapter III of Regulation (EC) No 1/2003 <sup>(2)</sup> and adopted a preliminary assessment as referred to in Article 9(1) on 22 December 2009. Ensuing discussions with the Commission services led E.ON to submit commitments in January 2010. Under these commitments, E.ON primarily ensures an immediate significant release of entry capacities both for high-calorific gas ('H-gas') and low-calorific gas ('L-gas') as well as a long-term reduction of its capacity bookings for both gas networks starting at the latest on 1 October 2015. In these regards, E.ON has accepted to market the released capacities initially for the first two years and subsequently for the remaining duration of the commitment. Furthermore, E.ON has undertaken to release a proportional quantity of adjacent exit capacities at the entry points where a shortage of such capacities exists and where it disposes at the same time of significant reservations of exit capacity.

On 22 January 2010, the Commission published a notice in the *Official Journal of the European Union* pursuant to Article 27(4), summarising the concerns and the commitments whilst inviting interested third parties to submit observations on this notification within one month of its publication. A total of 20 responses were received from interested parties, notably from competitors, associations of gas suppliers and customers as well as from national regulators.

The Commission informed E.ON of the result of the market test. The undertaking reacted to the concerns expressed and submitted a revised proposal of commitments on 24 March 2010.

The Commission has now come to the conclusion that, in view of the latter commitments, and without prejudice to Article 9(2), the proceedings should be brought to an end.

E.ON has declared to the Commission that it has received sufficient access to the information it considered necessary to propose commitments in order to meet the concerns expressed by the Commission.

No additional queries or submissions have been made to the Hearing Officer in connection with the present case by E.ON or any third parties.

In the light of the above, I consider that the right to be heard has been respected in this case.

Brussels, 16 April 2010.

Michael ALBERS

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<sup>(1)</sup> Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21.

<sup>(2)</sup> In the following, all Articles referred to relate to Regulation (EC) No 1/2003.