Summary of Commission Decision
of 18 March 2009
relating to a proceeding under Article 82 of the EC Treaty and Article 53 of the EEA Agreement
(Case COMP/B-1/39.402 — RWE Gas Foreclosure)
(notified under document number C(2009) 1885)
(Only the German text is authentic)
(Text with EEA relevance)
(2009/C 133/08)

On 18 March 2009, the Commission adopted a decision relating to a proceeding under Article 82 of the EC Treaty.

In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 (1), the Commission herewith
publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard
to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version
of the decision is available on the Directorate-General for Competition website at the following address:
http://ec.europa.eu/comm/competition/antitrust/cases/index/

(1) The decision is addressed to RWE AG, Germany (‘RWE’). It makes commitments binding which were offered by
RWE to address competition concerns identified by the Commission’s investigation in the German gas sector. In
the light of the commitments offered, the Commission considers that there are no longer grounds for action on
its part.

(2) The concern of the Commission was that RWE may have
abused its dominant position on German gas markets by
different types of anti-competitive behaviour, notably the
refusal to supply gas transmission services to third parties
and a behaviour aiming at lowering the margins of
RWE’s downstream competitors in gas supply (‘margin
squeeze’).

(3) As regards a possible refusal to supply gas transmission
services to third parties, the Commission had concerns
that RWE may have pursued a strategy according to which it tried to systematically keep the transport capacities
on its own network for itself. There are indications that in order to achieve this goal, RWE TSO may not
have implemented an effective congestion management system to manage the scarce capacities on its network,
which could have avoided many of the refused and
delayed capacity requests.

(4) As regards a possible margin squeeze strategy, there were
indications that RWE may have intentionally set its trans-
mmission tariffs at an artificially high level in order to
squeeze RWE’s competitors’ margins. Such a behaviour
has the effect of preventing even an as efficient competitor to compete effectively on the downstream
gas supply markets or limiting competitors’ or potential
entrants’ ability to remain in or enter the market.

(5) RWE proposed commitments to address the Commis-
sion’s concerns on the German gas markets. Essentially,
RWE committed to divest its entire current German high-
pressure gas transmission network (2) to a suitable
purchaser which must not raise prima facie competition
concerns. The divestment offer also comprises auxiliary
equipment, personnel and services necessary for the
operation of the transmission network.

(6) The Commission considers that the commitments are
sufficient to address the initial concerns identified by
the Commission, without being disproportionate.

(7) The divestiture of RWE’s gas transmission network can
be considered as a structural remedy, as it does not only
oblige RWE to behave in a certain manner, but consists in the
divestment of its gas transmission activities, which
effectively removes the possibility for RWE to engage in infringements of the same type.

(8) The commitments are suitable to remove the Commis-
sion’s competition concerns. The sale of RWE’s trans-
mision business will ensure that RWE has no control
over the gas transmission network and that RWE cannot
engage in anti-competitive practices relating to the access
to its network anymore. The commitments proposed by
RWE are also necessary, since there is no equally effective
remedy as a divestment of RWE’s transmission network.

(2) It may be noted that some network parts in the area of Bergheim
(length: approx. 100 km) will be exempted from the divestment. These 100 km of the transmission network can, according to
RWE, not be economically divested to a third purchaser since there are no sufficient measurement facilities for the gas flows to
downstream grid parts in this area, see Schedule 4 of the
commitment text.

(1) OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC)
to address the Commission’s concerns. Finally, the commitments must be regarded as adequate and proportionate to the identified competition concerns, not the least with a view to the large number of customers connected to RWE’s gas transmission network and the important potential harm for these customers.

(9) The decision finds that in view of the commitments there are no longer grounds for action by the Commission.

(10) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 5 March 2009.