

Summary of Commission Decision**of 26 November 2008****relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement****(Cases COMP/39.388 — German Electricity Wholesale Market and COMP/39.389 — German Electricity Balancing Market)***(notified under document number C(2008) 7367 final)***(Only the English text is authentic)****(Text with EEA relevance)**

(2009/C 36/08)

On 26 November 2008, 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 decision, 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 Competition Directorate General website at the following address:

<http://ec.europa.eu/comm/competition/antitrust/cases/index/>

- (1) The Decision is addressed to E.ON AG, Düsseldorf (hereafter 'E.ON') and concerns two cases, one on the German electricity wholesale market and one on the German balancing market. It makes commitments offered by E.ON to bring the two cases to an end binding. In the light of the commitments offered, the Commission considers that there are no longer grounds for action on its part.
- (2) As regards the case on the German wholesale market, the concern of the Commission was that E.ON may have designed a strategy to withdraw available generation capacity (limiting the supply of electricity from certain plants on the short term market — the power exchange EEX) with a view to raising electricity prices to the detriment of consumers thereby abusing its dominant position on the German electricity wholesale market. In addition the Commission had concerns that this may have been complemented by a medium and long-term strategy by E.ON of deterring actual or potential competitors from entering the generation market and thereby limiting the market volume in electricity generation.
- (3) As regards the case on the German electricity balancing market, the concern was that E.ON may have abused its dominant position on the market for the demand of secondary balancing reserves in the E.ON network area according to Article 82 of the EC Treaty first by increasing its own costs with a view to favouring its production affiliate and passing the costs on to the final consumer; and second by preventing power producers from other Member States from exporting balancing energy into the E.ON balancing market.
- (4) The Commission considers that the commitments offered following the preliminary assessment and the observations submitted by interested third parties are sufficient to address the identified competition concerns. First, the divestiture of about 5 000 MW of E.ON's generation capacity addresses the concerns on the wholesale market. This divestiture removes the ability and the incentive to withdraw generation capacity profitably, which was possible particularly due to the structure of E.ON's power plant portfolio. The divested plants will also help actual and potential competitors to get access to new plants and plants with technologies that they do not possess. In addition, competitors will get access to new sites which will help them to build up (or rebuild) even more generation capacity with new power plants. Second, the divestiture of E.ON's transmission system business, consisting of its 380/220 kV-line network, the system operation of the E.ON control area and related activities addresses the concern on the balancing market arising from the vertically integrated structure of E.ON which is active in production/supply and transmission.
- (5) The decision finds that in view of the commitments, there are no longer grounds for action by the Commission.
- (6) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 3 November 2008.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.