COMMISSION DECISION

of 13/06/2005

initiating an inquiry into the gas and electricity sectors pursuant to Article 17 of
Cases COMP/B-1/39.172 (electricity) and 39.173 (gas)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the
implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹,
and in particular Article 17 thereof,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions

Whereas:

(1) According to Article 17 of Regulation (EC) No 1/2003 the Commission may decide to
conduct an inquiry into a particular sector of the economy or into particular types of
agreements across various sectors, where the trend of trade between Member States,
the rigidity of prices or other circumstances suggest that competition may be restricted
or distorted within the common market.

(2) In the electricity and gas sectors, the trend of trade between Member States is such that
cross-border flows seem to have limited effect on constraining prices between most
Member States and integration between historically separate national markets has been
slow in many regions.

(3) With respect to prices, both gas and electricity prices have risen during 2005 and
current forward prices point to further price rises in the future, especially for gas. The
incumbent suppliers attribute the price increases to increased costs and technical
arguments. However, price rises are of particular concern since complainants express
little trust in existing mechanisms of price formation. Liquidity is low on most
electricity exchanges or gas trading hubs. This leads to price volatility and may give
scope for manipulation. Electricity customers and particularly energy intensive
industrial consumers in many Member States also complain about difficulties securing
competitive offers from different suppliers, they receive almost always very similar
price offers, and they have difficulty negotiating non-price terms in their contracts.

(4) Other circumstances that suggest that competition may be restricted or distorted relate
to the limited new entry in the markets and to the market concentration which remains
very high. Complainants have raised concerns that network operators favour their

p. 1).

(5) It is therefore appropriate to initiate a sector inquiry in the electricity and gas sectors within the Community to allow the Commission to use its powers of investigation with respect to the undertakings or associations of undertakings concerned in the sector so as to give effect to Articles 81 and 82 of the Treaty, either on their own or in conjunction with Article 86.

(6) In the electricity sector, the undertakings or associations of undertakings concerned are, _inter alia_, generators, traders of electricity or access rights (or financial derivatives of them), owners and operators of transmission and distribution networks, electricity exchanges, operators of “merchant” inter-connectors, wholesalers and demand aggregators, industry associations, consultants, intermediaries, end-users and retail supply companies.

(7) In the gas sector, the undertakings or associations of undertakings concerned are, _inter alia_, gas producers (including some producers outside the Community whose activities are likely to have a potential effect on the Community), gas importers, traders of gas or access rights (or financial derivatives of them), operators of gas hubs, owners and operators of high-pressure transmission and low-pressure distribution systems, operators of “merchant” inter-connectors, wholesalers and demand aggregators, storage operators, industry associations, consultants and intermediaries, end-users and retail supply companies.

(8) In the context of the inquiry initiated by this Decision, information might also be sought from authorities such as national regulatory authorities and their European representatives, national competition authorities, financial regulators or Member State governments.

(9) To the extent that the inquiry confirms the existence of anticompetitive agreements or practices or abuses of a dominant position, the Commission or, where appropriate, the national competition authorities could envisage using the information collected in order to take the appropriate measures to restore competition in the relevant markets, including addressing individual decisions to the entities concerned based on Article 81 and Article 82, on their own or, for the Commission, in conjunction with Article 86 of the EC Treaty.

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\(^3\) OJ L176 of 15.07.2003, p. 57
HAS DECIDED AS FOLLOWS:

Sole article

Pursuant to Article 17 of Regulation (EC) No 1/2003, an inquiry is hereby initiated in the electricity and gas sectors, covering the Community.

Done at Brussels, […]

For the Commission
[…]
Member of the Commission