Notice of request concerning the applicability of Article 34 of Directive 2014/25/EU

Request made by a contracting entity

(2017/C 85/06)

On 30 January 2017 the Commission received a request pursuant to Article 35 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC [1]. The first working day following receipt of the request is 31 January 2017.

This request, made by Eneco BV, NV Nuon Energy and DONG Energy A/S, concerns production and wholesale of electricity in the Netherlands.

Article 34 of Directive 2014/25/EU provides that 'contracts intended to enable an activity mentioned in Articles 8 to 14 to be carried out shall not be subject to this Directive if the Member State or the contracting entities having introduced the request pursuant to Article 35 can demonstrate that, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted; nor shall design contests that are organised for the pursuit of such an activity in that geographic area be subject to this Directive.' The assessment of direct exposure to competition that can be carried out in the context of Directive 2014/25/EU is without prejudice to the full-fledged application of competition law.

The Commission is allowed a period of 105 working days to take a decision on this request, commencing on the working day referred to above. The period therefore expires on 6 July 2017.

According to Article 35(5) of Directive 2014/25/EU, further requests concerning production and wholesale of electricity in the Netherlands, before the expiry of the period opened in respect of this request, shall not be considered as new procedures and shall be treated in the context of this request.

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[1] OJ L 94, 28.3.2014, p. 243.