

DISTRIGAS – COMP / B-1 / 37.966

**COMMITMENTS UNDER ARTICLE 9 OF
COUNCIL REGULATION N°1/2003**

INTRODUCTION

In accordance with Article 9 of Council Regulation N°1/2003 (*Article 9*), Distrigas SA/NV (*Distrigas*) offers the following commitments (*Commitments*) to the European Commission (the *Commission*) provided that the Commission will adopt a decision (*Article 9 Decision*) confirming that the Commitments meet the concerns as expressed by the Commission in its Preliminary Assessment dated 1 July 2005, Statement of Objections dated 27 February 2004 and Supplementary Statement of Objections dated 8 May 2006 in the context of its investigation in Case COMP/B-1/37.966.

Consistent with Article 9, these Commitments may not be interpreted as an acknowledgement by Distrigas that it has infringed competition law. By accepting these Commitments, the Commission confirms that there are no longer grounds for action by the Commission without concluding whether or not there has been or still is an infringement under Article 81(1) or 82 EC Treaty.

These Commitments take account of the undertakings contained in the decision of the Commission in case COMP/M.4180 Gaz de France/Suez dated 14 November 2006 pursuant to which (i) the merged Suez/GDF group will sell the participation held by Suez in Distrigas' share capital, (ii) an independent third party trustee has been appointed to monitor the compliance by the merging parties with the abovementioned decision of the Commission (including the management of Distrigas by a hold separate manager) and (iii) prior to the divestiture of its stake in Distrigas, the merged entity will conclude one or more supply contracts with Distrigas, intended to cover part of the needs of Electrabel SA (*Electrabel*) for its gas-fired power plants and part of the needs of Electrabel Customer Solutions SA (*ECS*) to serve its customers (the *Merger Remedies*).

1. DEFINITIONS

For the purpose of these Commitments, the following terms will have the meaning indicated below:

- **Annual Contract Quantity(ies) (ACQ)** means the annualised contractual reference quantity(ies) as set out in Gas Supply Agreements.
- **Annual Total Quantity(ies) (ATQ)** means the total quantity(ies) actually offtaken by a Customer in a contract year under a Gas Supply Agreement.
- **Connected Undertaking** means any company within the Distrigas group of companies as defined in Article 11 of Regulation N°2790/1999 on the

application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices.

- **Customer** means any industrial consumer of gas with a consumption in Belgium of more than 12 GWh / year (irrespective of the number of sites of consumption) or Power Producer.
- **Date of Transfer of Distrigas** means the date of the transfer of the ownership of the shares held by Suez in Distrigas' share capital to a purchaser in accordance with the Merger Remedies.
- **Distrigas** means Distrigas SA/NV and any undertaking in which Distrigas holds the rights and / or powers listed in Article 11.2(a) of Regulation N°2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices.
- **Effective Date** means the date upon which Distrigas receives formal notification of the Article 9 Decision from the Commission accepting these Commitments.
- **Existing Gas Supply Agreement** means any agreement for the supply of gas between Distrigas and a Customer or a Reseller under which gas is supplied during the calendar year 2007.
- **Gas Supply Agreement** means any agreement for the supply of low calorific and / or high calorific natural gas entered into or to be entered into by Distrigas with either a Customer or a Reseller other than an Intra-Group Agreement.
- **Intra-group Agreement** means any gas supply agreement entered into or to be entered into between Distrigas as seller and a Connected Undertaking as buyer. Gas Supply Agreements under which gas is supplied on 1 March 2007 between Distrigas as seller and Electrabel, ECS and their connected undertakings as buyer will be deemed Intra-Group Agreements.
- **Power Producer** means an entity that purchases gas from Distrigas for the purpose of power generation in Belgium.
- **Relevant Volume** means for any calendar year the aggregate of the Annual Contract Quantities during that calendar year in Gas Supply Agreements with Customers excluding the quantities supplied under gas supply agreements provided for under Paragraphs 3.2, 3.3 and 3.4.
- **Relevant Reference Volume** means [45-55] TWh being the Relevant Volume for the calendar year 2007. Should the Merger Remedies cease to be of effect as provided for in the Merger Remedies¹, the Relevant Reference Volume will

¹ Last paragraph of page 289 of the decision of the Commission in Case COMP/M.4180, Suez / Gaz de France, dated 14 November 2006: “*si l’Opération [the Suez/GDF merger] est abandonnée, abrogée, non autorisée par une autorité gouvernementale compétente ou n’est pas mise en oeuvre*”

be [55-65] TWh as of the date of such cessation. Should such date of cessation not occur on 1 January, the Relevant Reference Volumes shall be prorated for that calendar year.

- **Reseller** means an entity that purchases gas from Distrigas essentially for the purpose of reselling that gas to end consumers in Belgium. For the avoidance of doubt, any gas sales to a company within a group of companies whereby the gas is transferred within that group before being resold to end consumers in Belgium shall be sales to a Reseller.
- **Tacit Renewal Clause** means any clause providing that a Gas Supply Agreement is automatically renewed for a specific duration at the next contractual termination date unless one of the parties gives prior notice of termination to the other, or any clause providing for a negotiation between a Customer or Reseller and Distrigas prior to the next contractual termination date with the aim of concluding a new Gas Supply Agreement.

2. COMMITMENTS

2.1 Specific clauses

2.1.1 Distrigas undertakes not to include in any new Gas Supply Agreement any clauses whereby the Customer or Reseller is restricted in the use, resale or destination of the gas purchased from Distrigas². Distrigas shall take all measures that are within its control to procure that Existing Gas Supply Agreements are amended to remove such clauses and shall not enforce such clauses in any Existing Gas Supply Agreement.

2.1.2 Distrigas undertakes not to include in any new Gas Supply Agreement any Tacit Renewal Clause. Distrigas shall take all measures that are within its control to procure that Existing Gas Supply Agreements are amended to remove such clauses or shall give notice of termination, with effect at the next contractual termination date, for any Existing Gas Supply Agreements from which such clauses are not removed.

2.2 Gas Supply Agreements with Customers

2.2.1 Distrigas undertakes that, under this Paragraph 2.2, a certain volume of gas shall return to the market each calendar year in accordance with the following provisions.

2.2.2 Distrigas undertakes that for each calendar year in which these Commitments are applicable a minimum of 65 % of the Relevant Volume and on average for all the calendar years during which the Commitments apply a minimum of 70 % of the Relevant Volume will be supplied under Gas Supply Agreements with Customers which fall under the following categories:

pour quelque raison que ce soit, les Engagements seront automatiquement caducs et n'auront pas à être mis en oeuvre."

² It being understood that a clause which merely designates the point of delivery of the gas does not give rise to such a restriction.

- agreements with a duration of n years, for which ACQ/n will be taken into account for the calculation of the abovementioned percentages of the Relevant Volume;

and/or

- agreements with a duration of n years, starting or ending in the course of any calendar year, for which ACQ/n will be taken into account pro rata temporis for the respective first and last calendar year of those contracts for the calculation of the abovementioned percentages of the Relevant Volume.

2.2.3 If during any calendar year, the Relevant Volume is below the Relevant Reference Volume, in order to determine whether Distrigas has fulfilled its undertaking under Paragraph 2.2.2, Distrigas shall have the option to replace the expressions “65% of the Relevant Volume” and “70% of the Relevant Volume” referred to under Paragraph 2.2.2 with “the Relevant Volume minus [13-18] TWh” or, as from the earlier of the date at which the Merger Remedies cease to be of effect as provided for under the Merger Remedies or the Date of Transfer of Distrigas, with “the Relevant Volume minus [15-20] TWh”.

2.2.4 If the sum of the ATQs in Gas Supply Agreements with Customers exceeds the Relevant Volume by more than 10%, then for each Gas Supply Agreement with a Customer where the ATQ exceeds the ACQ by more than 10%, the quantities above such 10% excess shall be added to the ACQ and to the Relevant Volume in applying Paragraph 2.2.2.

2.2.5 Distrigas undertakes not to conclude new Gas Supply Agreements with Customers with a duration of more than 5 years (other than Intra-group Agreements and Gas Supply Agreements for the purpose of the supply of gas to Electrabel’s electricity generation plants as explicitly referred to in section C.II.2 of the Merger Remedies).

2.3 Gas Supply Agreements with Resellers

Distrigas undertakes not to conclude new Gas Supply Agreements with Resellers with a duration of more than two years (other than Intra-group Agreements and Gas Supply Agreements for the purpose of the supply of gas to ECS as explicitly referred to in section C.II.2 of the Merger Remedies). Distrigas confirms that at the Effective Date, it does not have any Gas Supply Agreements with Resellers with an initial duration of more than three years and a remaining duration of more than two years.

2.4 Existing Gas Supply Agreements

For Existing Gas Supply Agreements with a Customer with a duration of five years or more, Distrigas shall grant the Customer a unilateral right to terminate such Gas Supply Agreement without compensation with effect at each anniversary of the starting date of such Gas Supply Agreements upon giving Distrigas six months’ prior notice of termination. For the purpose of the application of Paragraph 2.2, such Existing Gas Supply Agreements shall be deemed to be concluded for one year. Distrigas confirms that at the Effective Date, it does not have any Gas Supply Agreements with a duration of more than five years, other than Existing Gas Supply

Agreements referred to under this Paragraph 2.4, without prejudice to the provisions of Paragraphs 3.2, 3.3 and 3.4.

3. DURATION AND SCOPE

3.1 These Commitments will be applicable for a duration of four years as from 1 January 2007.

3.2 These Commitments are not applicable to (i) any gas sales trading activities on the Zeebrugge Hub, or other gas hubs in Belgium or at any other relevant border points in Belgium other than sales to Customers or (ii) sales outside Belgium.

3.3 These Commitments are not applicable to Gas Supply Agreements with Customers to the extent that they require the supply of gas for new investment in power generation capacity provided that the new investment³ represents an installed electrical generation capacity of at least 10 MW.

3.4 These Commitments are not applicable to Intra-group Agreements and to Gas Supply Agreements as explicitly referred to in section C.II.2 of the Merger Remedies.

3.5 Should the Merger Remedies cease to be of effect as provided for in the Merger Remedies, for the purpose of the application of Paragraph 2.2:

- gas supply agreements entered into by Connected Undertakings with Customers shall be deemed to be Gas Supply Agreements. For that purpose, the Annual Contract Quantities shall be added to the Relevant Volume; and
- gas supply agreements under which gas is supplied during the calendar year 2007 for which a Connected Undertaking has granted the Customer a right to terminate the agreement, with six months' prior notice and without compensation, with effect at each anniversary of the starting date of such agreement, shall be deemed to be concluded for one year.

³ For the purpose of this Paragraph 3.3, investment in new power generation capacity for which commercial operations have started after 1 January 2006, shall be considered to be new investment in power generation capacity.

3.6 For the purpose of the application of Paragraph 2.2, as from the Date of Transfer of Distrigas:

- new gas supply agreements entered into by Connected Undertakings with Customers after the Date of Transfer of Distrigas shall be deemed to be Gas Supply Agreements. For that purpose, the corresponding Annual Contract Quantities shall be added to the Relevant Volume; and
- existing gas supply agreements entered into by Connected Undertakings with Customers before the Date of Transfer of Distrigas shall be considered to be Gas Supply Agreements 12 months after the Date of Transfer of Distrigas if the sum of the Annual Contract Quantities of such existing Gas Supply Agreements exceeds five per cent of the Relevant Reference Volume and the corresponding Annual Contract Quantities shall be added to the Relevant Volume and to the Relevant Reference Volume. For the purpose of the application of this Paragraph 3.6 second indent, said Gas Supply Agreements pursuant to which the Customer is granted a right to terminate the agreement, with six months' prior notice and without compensation, with effect at each anniversary of the starting date of such agreement, shall be deemed to be concluded for one year.

3.7 These Commitments shall be binding on Distrigas only to the extent that and as long as Distrigas holds a share of more than 40% and at least 20% more than the share of its nearest competitor on the market in Belgium for the supply of natural gas to Customers. For the purpose of the application of this Paragraph 3.7, sales by Connected Undertakings to Customers shall be added to Distrigas' sales and to the size of the market in Belgium but Intra-group Agreements and Gas Supply Agreements as explicitly referred to in section C.II.2 of the Merger Remedies shall not be added to Distrigas' sales or the size of the market in Belgium.

4. MONITORING PROVISIONS

Distrigas will prepare an annual report on compliance with the Commitments, which it will provide to the Commission by 15 February every year for the previous calendar year. The first such report will be provided on 15 February 2008 for the calendar year 2007 or within one month of the Effective Date whichever is the later.

5. REVIEW MECHANISMS

Pursuant to Article 9.2(a) of Council Regulation (EC) 1/2003, Distrigas may request the Commission to reopen the proceedings with a view to modifying these Commitments where there has been a material change in any of the facts, including the market structure, on which the Commission's decision pursuant to Article 9(1) of that Regulation is based.