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Commission and Algeria reach agreement on territorial restrictions and alternative clauses in gas supply contracts

The EU Commissioner for Competition, Neelie Kroes, and the Algerian Minister for Energy and Mines, Dr Chakib Khelil, have reached a common understanding on the clauses dealing with territorial restrictions and profit sharing mechanisms in gas supply agreements by the Algerian gas producer Sonatrach destined to satisfy the gas requirements of the European countries. Both sides welcome this outcome and regard it as a further step in deepening the strategic relations between Algeria and the EU.

The agreement was reached after a sustained dialogue in which the Commission's concerns relating to the anti-competitive nature of such clauses were discussed. Commissioner Kroes remarked, "*The agreement reached constitutes a major breakthrough in our relations with one of Europe's most important suppliers for natural gas and eliminates an important obstacle for the creation of a single EU-wide market in gas.*" Minister Khelil stated, "*Algeria supports the establishment of Sonatrach as an active player in an open, transparent and competitive European Union gas market*".

The common understanding reached can be summarised as follows:

- Deletion of territorial restriction from all existing contracts and no insertion in future contracts.
- Profit sharing mechanisms (so called "PSMs") only to be applied in LNG contracts under which the title of the gas remains with the seller until the ship is unloaded (in practice, sales under DES terms). Consequently, Sonatrach is aiming to transform the remaining FOB and CIF existing LNG contracts to sales under DES terms.
- No PSMs in future LNG contracts under which the title of the gas passes to the purchaser at the port of loading (in practice, for sales under FOB and CIF terms).
- No PSMs in existing or future pipeline gas supply contracts.

In gas supply contracts between a gas producer and a gas wholesaler, territorial restrictions, also called "destination clauses", prevent the buyer from reselling the gas outside a certain geographic area (normally a Member State).

Profit sharing mechanisms oblige the buyer/importer to share a certain part of the profit with the supplier/producer if the gas is sold on by the importer to a customer outside the agreed territory or to a customer using the gas for another purpose than the one agreed upon. PSMs have been used as an alternative to territorial restrictions clauses.