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***Case No COMP/M.4180  
– Gaz de France/ Suez***

Only the French text is authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 8 (2)  
Date: 28.10.2011

Brussels, 28.10.2011  
C(2011)7572 final

PUBLIC VERSION

**COMMISSION DECISION**

**of 28.10.2011**

**amending Commitments Nos 73 and 84 in the Decision in Case COMP/M.4180 –  
Gaz de France/ Suez**

(Only the French text is authentic)

# COMMISSION DECISION

of 28.10.2011

## amending Commitments Nos 73 and 84 in the Decision in Case COMP/M.4180 – Gaz de France/Suez

(Only the French text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup>, and in particular Article 8(2) thereof, and points (i) and (ii) of Section F II Commitments accepted in Case No COMP/M.4180 – Gaz de France/Suez,

Whereas:

### 1. THE FACTS

#### 1.1. Background

- (1) By its Decision of 14 November 2006<sup>2</sup>, the Commission authorised the merger of GDF and Suez, subject to the implementation of commitments (hereinafter ‘the Commitments’).
- (2) The Commitments included *inter alia* measures relating to gas infrastructure in France, among them (i) the development of two new storage sites in France (the Trois Fontaines and Alsace sites), with their excess capacity to be offered on the market (Commitment No 73), and (ii) the installation of a gas deodorisation plant at Taisnières, on the French-Belgian border (Commitment No 84).
- (3) By letter of 9 November 2009 GDF Suez (the new entity resulting from the merger of 16 July 2008) informed the Commission of difficulties in implementing Commitments Nos 73 and 84 and requested their modification (hereinafter ‘the Initial Request’).
- (4) At the Commission’s request, GDF Suez submitted additional information (hereinafter ‘the Additional Information’) between December 2009 and January 2011. GDF Suez also met Commission staff on 22 October 2010.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1.

<sup>2</sup> Case No COMP/M.4180 – Gaz de France/Suez, Commission Decision of 14 November 2006.

- (5) By letter of 24 June 2011 addressed to the Commission, GDF Suez submitted a formal request for modification of Commitments Nos 73 (storage site) and 84, amended by letter of 18 July 2011 (hereinafter ‘the Final Request’).

## **1.2. The final Opinion of the Monitoring Trustee**

- (6) By letter of 2 August 2011 the Monitoring Trustee submitted its final opinion (‘the Opinion’) on the Final Request.

## **2. GDF SUEZ’S REQUEST**

### **2.1. Commitment No 73 (Alsace storage site)**

- (7) GDF and Suez committed themselves *inter alia* to developing storage capacity of around 60 million m<sup>3</sup> at the Alsace site (or at another site to be agreed) and offering the excess capacity of the site on the market through a transparent and non-discriminatory mechanism. This capacity was to be reserved before end-2009 and to come on stream by 2018 at the latest.
- (8) In the Initial Request and the Final Request (hereinafter together ‘the Requests’) GDF Suez states that the Hauterives site (southern France) is to replace the Alsace site (eastern France) [...]\*.
- (9) In addition, GDF Suez asks for the tender for storage capacity at the Hauterives site to be postponed until [...]\* at the latest (instead of end-2009 at the latest). In support of this request, GDF Suez refers to the difficult economic context in the gas sector. [...]\*.
- (10) GDF Suez emphasises that, in any event, the storage capacity in question will be put on the market by [...]\* at the latest, i.e. long before the deadline (2018) laid down in the Commitment.
- (11) In order to ensure maximum success for the sale, GDF Suez made, *inter alia*, the following commitments in its Final Request:
- (a) subject to the approval of the French authorities, Storengy will offer the maximum of its storage capacity by way of multiannual contracts;
  - (b) the reserve price will be no higher [...]\*.

### **2.2. Commitment No 84 (Taisnières deodorisation plant)**

- (12) GDF and Suez undertook to make GRTgaz (the wholly owned GDF Suez subsidiary which manages the gas transmission network) install as from January 2010 a deodorisation plant at the Taisnières H entry point capable of providing a physical flow towards Belgium of 300 000 m<sup>3</sup>/h of gas.

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\* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

- (13) GDF Suez stresses that it has had major difficulties with the deodorisation plant project.
- (14) According to GDF Suez, these difficulties derive, in part, from problems in getting deodorised gas accepted in Belgium. Whereas Fluxys (which manages the gas transmission network in Belgium) had agreed in principle to allowing deodorised gas into Belgium, this has subsequently been met by significant hesitation and even refusal by a great many Belgian gas distributors and operators adjacent to Fluxys's network.
- (15) In addition, according to GDF Suez, the difficulties derive from the reservations about the project expressed by the French authorities in view of its marked environmental impact.
- (16) GDF Suez also states that demand for reverse flow capacity from France to Belgium by shippers has, for a long time, always been met, even without a deodorisation plant.
- (17) According to GDF Suez, the current administrative and economic environment shows there to be little interest among key players for this project.
- (18) Moreover, GDF Suez emphasises that the construction of a methane terminal planned by EDF at Dunkirk will result in an interconnection between Dunkirk and Veurne in Belgium which will make the transmission of non-odorised gas from France to Belgium possible. In this respect, GDF Suez notes that the non-binding phase of the open season launched jointly by GRTgaz and Fluxys principally concerning the development of capacity for non-odorised gas transmission from France to Belgium revealed considerable interest from potential clients of the Dunkirk terminal for firm capacity between the terminal and Belgium of a much greater volume than that represented by the deodorisation plant's capacity at Taisnières. Consequently, in GDF Suez's view, there is no longer any reason to build the deodorisation plant.
- (19) Arguing that market conditions have changed significantly and definitively since 2006, GDF Suez asks the Commission for Commitment No 84 to be lifted, without any other commitment taking its place.

### **3. ANALYSIS**

#### **3.1. Review of the legal framework**

- (20) Section F II of the Commitments stipulates that they can be amended by the Commission on submission of a written request by GDF Suez for legitimate reasons and after consulting the Monitoring Trustee. Thus the Commission can (i) extend the deadlines laid down for fulfilment of the Commitments and/or (ii) remove or amend, in exceptional circumstances, one or more of the conditions or obligations constituting the Commitments.
- (21) Furthermore, any request for an extension to a deadline must be submitted by no later than one month before the expiry of the deadline concerned, or during the final month if justified by exceptional circumstances.

### **3.2. Commitment No 73 (Alsace storage site to be replaced by the Hauterives site)**

- (22) It is apparent from the information available to the Commission that the economic context for gas is not favourable to the reservation of storage capacity.
- (23) Since November 2008, wholesale gas prices have remained significantly lower than the prices for long-term supply contracts<sup>3</sup>. Gas shippers are therefore induced to make greater use of short-term gas supplies for which storage is unnecessary.
- (24) Moreover, throughout 2010 the limited difference in the market price of gas for the summer 2010 and winter 2010/2011 seasons provided little incentive for shippers to reserve storage capacity in which to stock gas over the summer of 2010<sup>4</sup>. Storengy, the GDF subsidiary which manages storage sites, pointed to an unprecedented decline in the take-up of storage capacity for the 2010/2011 gas year<sup>5</sup>.
- (25) In view of the above, the conclusion can be made that there are legitimate grounds for GDF Suez's request for the lifting of Commitment No 73.
- (26) It should also be noted that GDF Suez accompanied its Final Request with commitments which are likely to ensure maximum success in the future sale of storage capacity, in particular with respect to the offer of multiannual capacity and the fixing of a ceiling for the reserve price.
- (27) In addition, the sale of such capacity will take place on [...] \* at the latest, [...] \*.
- (28) It should also be noted that the Initial Request, dated 9 September 2009, was submitted within the time limit laid down in Section F II of the Commitments.
- (29) It should further be noted that, in its Opinion, the Monitoring Trustee raised no objection to this request by GDF Suez.

### **3.3. Commitment No 84 (Taisnières deodorisation plant)**

- (30) In France gas is odourised when it enters the transmission network. In Belgium, in contrast, it is only odourised when it leaves the transmission network and enters the distribution network. Exported gas must first be deodorised to enable the physical passage of the gas from France to Belgium. At present, no such flow of gas exists owing to the lack of any deodorisation plants.
- (31) It is, nonetheless, possible to export gas from France to Belgium thanks to the 'reverse flow' mechanism. It is actually a virtual flow, with a reduction in the

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<sup>3</sup> *Observatoire des marchés de l'électricité et du gaz*, report by CRE (French regulatory authority) for the third quarter of 2010, p. 43.

<sup>4</sup> Commission de Régulation de l'Énergie (CRE, the French regulatory authority) *Le fonctionnement des marchés de gros français de l'électricité et du gaz naturel en 2009-2010*, 2009-2010 Report – October 2010, p. 85.

<sup>5</sup> *Campagne d'injection 2010 – Storengy s'adapte au recul des souscriptions des clients*, Storengy's commercial newsletter No 5, October 2010. Some 8% of storage capacity was not taken up for the 2010/2011 gas year, compared to just 0.18% for 2009/2010. For 2008/2009 capacity was fully subscribed.

physical flow of gas from Belgium to France. In view of the need for a physical flow of gas in the other direction, reverse flow capacity from France to Belgium is limited and interruptible.

- (32) The installation of the deodorisation plant at Taisnières was therefore supposed to make it possible to propose firm capacity for gas transmission from France to Belgium.
- (33) However, it appears from the information in the Commission's possession that there is a serious question mark hanging over the construction of the deodorisation plant owing to exceptional circumstances as explained below.
- (34) Firstly, fulfilment of Commitment No 84 seems to depend on third parties which are reluctant about, or even opposed to, the project.
- (35) Fluxys and the Belgian distribution network managers, as well as the Dutch and German transmission network managers (consulted by Fluxys), for their part, do not want to receive deodorised gas from this plant because traces of the odouring element would remain in the gas. From the information provided by GDF Suez it transpires that this situation arose long after the Commission's decision to authorise the merger. GRTgaz and Fluxys were in contact on the subject from 6 October 2006, but Fluxys did not mention the impossibility of implementing this project at that meeting or in its subsequent correspondence with GRTgaz.
- (36) In addition, there is uncertainty as to whether environmental authorisations can be obtained from the French authorities, because the plant is not really in line with France's new environmental guidelines decided in October 2007<sup>6</sup>, i.e. almost a year after the Commission's decision authorising the merger between GDF and Suez.
- (37) The existence of these difficulties has been borne out by the CRE<sup>7</sup> (the French energy regulator).
- (38) Secondly, there appears to be limited demand for existing or future capacity for the transmission of gas from France to Belgium from the existing interconnection point (Taisnières).
- (39) Demand for existing gas transmission capacity from France to Belgium (reverse flow capacity) is low at the Taisnières interconnection point. Indeed it can be noted that over the past two years only a monthly average of 42% of reverse flow capacity was reserved and the monthly reservation rate never exceeded 58%. So existing reverse flow capacity is far from saturated by existing demand, which would seem to confirm that there is no market demand for an extension to capacity to take gas from France to Belgium from Taisnières.
- (40) The interruptible nature of the reverse flow capacity does not appear to be the cause for the low level of take-up since, to date, there has never been an interruption of the

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<sup>6</sup> These new guidelines are commonly referred to as the 'Grenelle Environment Forum rules'.

<sup>7</sup> CRE meeting of 16 December 2010 approving the investment programme of GRTgaz for 2011. See point 3.3.

reverse flows. The physical throughput of gas has always been sufficient to allow for an uninterrupted reverse flow. It is therefore highly unlikely that the installation of a deodorisation plant that would give rise to firm capacity would significantly change demand for the transmission of gas from France to Belgium through Taisnières.

- (41) According to the CRE, the ‘non-binding open season concerning the development of firm transmission capacity from France to Belgium carried out by GRTgaz and Fluxys in the second half of 2010 showed... very limited interest in capacity relating to the [Taisnières] deodorisation plant’<sup>8</sup>.
- (42) Consequently, with respect to the installation of a deodorisation plant at Taisnières, the CRE advised GRTgaz ‘to explore all the alternatives that would make it possible to avoid users of the network having to support the burden of an investment which would not be used’<sup>9</sup>.
- (43) Thirdly, it should be noted that EDF has announced its final decision in favour of the construction of a methane terminal in Dunkirk<sup>10</sup>. This terminal, which is due to be commissioned in 2015, will result in the construction of gas transmission infrastructure which will make it possible to deliver non-odorised gas to Belgium, with significantly greater transmission capacity than that relating to the Taisnières deodorisation plant<sup>11</sup>.
- (44) As part of the open season referred to in recital (41), a project for the construction of a new gas pipeline between the future methane terminal and the Belgian border (Veurne) was put to the market. According to the CRE, this non-binding phase of the open season ‘revealed considerable market interest in the capacity that would be created at the level of the Veurne interconnector’<sup>12</sup>.
- (45) During this phase of the open season, total capacity of around 420 GWh/d was requested, the majority for 20 years, by shippers hoping to transfer gas from the Dunkirk terminal to the Belgian market<sup>13</sup>. The CRE therefore approved the investment plan put forward by GRTgaz for the development of an interconnector between Dunkirk and Veurne in Belgium. Under this plan, firm capacity for the transmission of non-odorised gas of between 270 GWh and 405 GWh<sup>14</sup> is to be brought on stream in 2015. The capacity for the transmission of non-odorised gas from Dunkirk to Belgium will therefore be three to five times greater than that of the deodorisation plant project at Taisnières<sup>15</sup>.

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<sup>8</sup> CRE meeting of 16 December 2010, referred to above.

<sup>9</sup> CRE meeting of 16 December 2010, referred to above.

<sup>10</sup> EDF press release of 29 June 2011.

<sup>11</sup> GRTgaz – press conference of 5 May 2011 – 2010 results and outlook.

<sup>12</sup> CRE meeting of 16 December 2010, referred to above.

<sup>13</sup> CRE meeting of 12 July 2011 ruling on the connection conditions of the Dunkirk methane terminal with the GRTgaz network and the development of a new interconnector with Belgium in Veurne.

<sup>14</sup> The capacity brought on stream will depend on the level of demand for capacity expressed during the binding phase of the open season to be launched in September 2011.

<sup>15</sup> The deodorisation plant at Taisnières should have capacity of 300 000 m<sup>3</sup>/h, i.e. 84.6 GWh per day.



- (46) It should further be noted that the French and Belgian energy regulators support the interconnection project between Dunkirk and Belgium<sup>16</sup>.
- (47) It is apparent from the above that the construction of the deodorisation plant is seriously jeopardised by factors beyond the control of GDF Suez and, moreover, it no longer corresponds to real market demand.
- (48) The conclusion can thus be made that GDF Suez's request to be relieved of Commitment No 84 without any other commitment taking its place is based on legitimate grounds. It should be noted that, in its Opinion, the Monitoring Trustee raised no objection to this request by GDF Suez.

#### **4. CONCLUSION**

- (49) For the reasons explained above, the Commitments are hereby amended as follows:
- (a) concerning Commitment No 73, the deadline for the sale of storage capacity at the Hauterives site (replacing the Alsace site) shall be postponed to [...] \* at the latest; the capacity shall be sold according to the principles laid down by GDF Suez in its Final Request of 18 July 2011;
  - (b) concerning Commitment No 84 on the construction of a deodorisation plant at the Taisnières H entry point, this Commitment shall be withdrawn without being replaced by any other commitment,

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<sup>16</sup> Joint press release by the CRE and the CREG (the Belgian energy regulatory authority) of 3 May 2010 ('*La CRE et la CREG soutiennent le projet d'open season de Fluxys and GRTgaz visant à développer une nouvelle interconnexion de transport de gaz entre la France et la Belgique*', i.e. the CRE and the CREG support the open season project of Fluxys and GRTgaz aimed at developing a new gas transmission interconnector between France and Belgium).

HAS ADOPTED THIS DECISION:

*Article 1*

The deadline for the sale of storage capacity at the Hauterives site (replacing the Alsace site) as laid down in Commitment No 73 shall be postponed to [...] at the latest. The capacity shall be sold according to the principles laid down by GDF Suez in its Final Request of 18 July 2011 [...]\*.

*Article 2*

Commitment No 84 concerning the construction of a deodorisation plant at the Taisnières H entry point is hereby withdrawn with effect from the date of adoption of this Decision.

*Article 3*

This Decision is addressed to:

**GDF Suez**  
1 place Samuel de Champlain  
92930 Paris La Défense cedex  
France

Done at Brussels, 28.10.2011

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*