

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/B-1/37966 — Distrigaz

(2007/C 77/14)

1. INTRODUCTION

1. The European Commission has received a set of commitments formally endorsed by Distrigaz SA/Distrigas NV ('Distrigas') in the course of a Commission investigation pursuant to Article 82 of the EC Treaty into Distrigas' gas supply activities in Belgium.
2. By publishing this notice the Commission intends to market test Distrigas' proposal for commitments, which are designed to address the Commission's competition concerns expressed in its preliminary assessment and statements of objections in this case. Subject to the results of this market test, the Commission intends to adopt a decision pursuant to Article 9(1) of 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 Treaty ⁽¹⁾. Such a decision would render binding the commitments offered by Distrigas. The decision would not conclude whether or not there had been or still was an infringement.

2. SUMMARY OF THE CASE

3. On 26 February 2004 the Commission adopted a Statement of Objections concerning Distrigas' gas supply contracts with an industrial customer. On 30 June 2005 the Commission adopted a preliminary assessment concerning Distrigas' gas supply contracts with a variety of customers (industrial users, electricity producers, resellers) in Belgium. On 8 May 2006 the Commission adopted a supplementary Statement of Objections focusing on Distrigas' gas supply contracts with industrial users in Belgium. These three documents are preliminary assessments within the meaning of Article 9(1) of Regulation (EC) No 1/2003.
4. Distrigas is part of the Suez group, which also includes Electrabel, the main electricity generator and supplier in Belgium, and Electrabel Customer Solutions, a gas and electricity reseller to smaller customers. Prior to liberalisation of the gas sector in 2000, Distrigas had the exclusive right to transport and store gas underground in Belgium and was the only supplier of gas to large customers. On 14 November 2006 the Commission approved the merger between Suez and Gaz de France, subject to a number of conditions including the divestment of Distrigas ⁽²⁾. These conditions are only applicable on completion of the merger.
5. According to the preliminary assessments, Distrigas is dominant on the market for the supply of gas to large customers in Belgium (possibly sub-divided into separate markets for different types of customer such as industrial customers, electricity producers and resellers). With very few exceptions, customers only have one gas supplier and therefore competition in the gas supply market only takes place when a contract expires and a new contract is concluded. The preliminary assessments expressed the concern that Distrigas' long-term gas supply contracts would limit the scope for other gas suppliers to conclude contracts with customers and so foreclose their access to the market. It would also prevent customers from switching.

3. COMMITMENTS

6. Distrigaz replied to the Commission's objections orally and in writing emphasising that it did not agree with the Commission's preliminary assessments. Distrigaz nevertheless offered to abide by a set of commitments, which are designed to address the Commission's concerns. These commitments are briefly summarised below and are published in full in English on the website of the Directorate General for Competition at:

<http://europa.eu.int/comm/competition/antitrust/cases>

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ Commission Decision of 14 November 2006 at:

http://ec.europa.eu/comm/competition/mergers/cases/decisions/m4180_20061114_20600_fr.pdf

7. The key elements of the commitments are as follows.
- Distrigas will ensure that for each calendar year a minimum of 65 % and on average for all calendar years a minimum of 70 % of the gas volumes supplied by itself and connected undertakings to industrial users and electricity producers in Belgium will return to the market, i.e. alternative suppliers can make a competing offer to the customers concerned ⁽¹⁾.
 - The volumes will be calculated on the basis of Distrigas' annual contract quantities (including existing contracts) and Distrigas has some flexibility to account for fluctuations over the years.
 - No new contract with industrial users and electricity producers can be longer than five years. Existing contracts with a duration of five years or more are granted unilateral termination rights with prior notice and without indemnity, which allows Distrigas as a transitional measure to treat them as one year contracts.
 - The following sales are not covered by the commitment proposal: (1) Volumes supplied to industrial customers with a consumption of less than 12 GWh, (2) electricity producers buying gas for a new installation exceeding 10MW, (3) intra-group sales and sales to Electrabel and Electrabel Customer Solutions as specifically referred to in the remedies in the merger between Suez and Gaz de France (unless such remedies cease to be of effect), (4) Distrigas' trading activities and (5) sales outside Belgium.
 - If Distrigas' total sales decrease from their 2007 level, then Distrigas will not be deemed to have violated the commitments if the volume that does not return to the market is not more than a certain fixed volume of gas sales (adjusted during the interim period prior to either the merger between Suez and Gaz de France or the decision that the merger should not go ahead), which represents less than 20 % of the total market(s) concerned.
 - Distrigas will not conclude any gas supply agreements with resellers with a duration of over two years.
 - Distrigas will not include any use, resale or destination clauses or any tacit renewal clauses in future gas supply agreements and will remove (or not enforce) any such clauses from existing gas supply agreements.
 - The commitments shall have a duration of four years from the start of 2007. The commitments shall apply as long as Distrigas holds a share of more than 40 percent of the market and at least 20 percent more than the share of its nearest competitor.
 - If Distrigas is acquired following divestment from Gaz de France/Suez then the future sales by the purchaser in the relevant market in Belgium will be included in the commitments. The purchaser's existing contracts will be included after a one year transitional period unless the purchaser's existing contracts represent no more than five percent of Distrigas' sales in 2007.

4. INVITATION TO COMMENT

8. The Commission intends, subject to the outcome of this market test, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the proposed commitments to be binding on Distrigas. To this end it invites interested third parties to submit any comments on the proposed commitments within one month of the publication of this notice.
9. Interested third parties are also asked to submit a non-confidential version of their comments, in which business secrets and other confidential passages are replaced by a non-confidential summary or by the words '(business secret)' or '(confidential)'. Distrigas may be granted access to the non-confidential versions of the comments received or of a summary thereof.
10. Comments should be sent to the following address, mentioning the reference 'COMP/B-1/37966 — Distrigas': e-mail to 'comp-greffe-antitrust@ec.europa.eu' or letter/fax to:

European Commission
Directorate General for Competition
Antitrust Registry
B-1049 Brussels
Fax: (32-2) 295 01 28.

⁽¹⁾ Regardless of whether the market covers only industrial users or also electricity generators, it appears that the proposed commitments would address the Commission's concerns.