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Dear Sébastien,

GdF Suez Commitments: Public Consultation on the commercialisation rules proposed by GRTgaz and Elengy for long term capacity released.

The headline commitment for a substantial reduction in transportation and LNG capacity held by GdF Suez is a remarkable achievement and has the opportunity to transform the French gas market and its place in NW Europe. Nevertheless, it is extremely challenging to devise a programme that will deliver this successfully in a way that will create sustainable competition to the benefit of French consumers and that will properly remedy the competition concerns held by the European Commission. At worst, a badly designed programme could lead to claims that the target is not achievable and should be abandoned, and it can be expected that it is in the interests of the affected parties to minimise the impact on their position. Our response below seeks to identify some ways to avoid ineffective implementation.

The commitments formally offered by GdF Suez, GRTgaz and Elengy in the framework of case COMP/B-1/39.316 already contain a number of constraints that will govern how capacity can be offered. These constraints already make the available products less attractive to potential competitors than would be possible in the absence of such constraints. We are to understand that this consultation does not allow the possibility to change these commitments. It is therefore essential that the commercialisation rules do not limit further the delivery of the commitments. Accordingly, we suggest a number of ways below to improve the effectiveness of the commercialisation rules. In some cases, these are not our preferred means of delivery, but the preferred method is ruled out by a detail in the commitments, so we have had to propose alternatives.

We would also make the point that it may be possible to deliver the commercialisation rules in a way that does not fulfil the commitments. It is impossible to specify everything in detail. The CRE should therefore not assume that meeting the commercialisation rules will fully discharge the obligations on the affected parties. On completion of the exercise, we would recommend that CRE reserve the right to review whether the commercialisation rules were followed and whether this led to fulfilment of the commitments before deciding whether further action is necessary.

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It should also be noted that the whole process of publishing the commitments (including in English) and developing the commercialisation rules has happened within a very short timeframe. This means the process has been rushed and may not have given participants enough time to analyse the rules and respond appropriately. Internal management procedures within potential bidding companies should also be factored in, especially when long term commitments with substantial capital exposure are expected. We suggest a minimum of 4 months between finalisation of terms and commencement of the bidding. Our hope is that the CRE provides the Trustees and the European Commission with feedback on the issues faced during the process, so that lessons can be learnt.

Please find below our response to the specific questions from the CRE public consultation.

Q1 *Do you agree with the principle of successive commercialisations of transport capacities on each entry point? If so, do you agree with the timetable forecast?*

We are concerned about the impact of dumping such a large proportion of import capacity on the market at the same time and the potential for destabilising the French market. It is unlikely that the level of customer switching will increase so dramatically in such a short time and French consumers may be left unsure whether contracts with existing suppliers will be fulfilled. The secondary market for capacity is not sufficiently advanced to reallocate large volumes efficiently. If this is seen as a one-time opportunity, the risk of oversubscription is increased. One possible scenario is that subscribing parties become distressed sellers of capacity, to the advantage of an incumbent who continues to control customer supply contracts.

We would have recommended instead a staged transition, with for example 25% of the available capacity offered annually for the next 4 years. This would give the market time to adjust and to resolve customer switching problems that are generally a feature of liberalising markets with sudden high volumes of switching. However, the commitments require that commercialisation of the capacity must all take place within 3 months of the Effective Date. Accordingly, we recommend that the available capacity should be broken down into a range of products with varying terms and start dates; and that these long, medium and short term products should be offered with start dates of Oct 2010, Oct 2011, Oct 2012, Oct 2013 and Oct 2014, allowing a customer to build up a portfolio over this period.

Our reading of the commitments does not mandate that the long term capacity contracts held by GdF Suez must be similarly offered in identical long term periods. Indeed they already suggest that the surrender of long term capacity holdings can be repackaged. As long as all capacity from 2010 is somehow made available in one or other products, it equally does not specify that all products must have the same start date.

Q2 *Considering these elements, do you agree with the capacity allocation rule proposed by GRTgaz which takes into account the duration of requests? Do you agree with the same priority rule for requests covering a duration equal to or over ten years?*

We believe that the market will best be served by a mixture of long and short term contracts. To that end an allocation mechanism that achieves this may need a ceiling on the volumes prioritised on the basis of duration.

Q3 *Do you agree with the lesser priority rule proposed by the CRE for shippers holding a substantial portion of long-term firm capacities?*

In principal we do agree with the 'lesser priority' rule proposed by the CRE, as it would give smaller shippers a better chance to attain capacity and stimulate competition in the French gas market. Clearly we need to see more detail on how this rule is likely to function, to be able to make a full assessment.

We are also interested to understand if this will translate into a limitation on how much capacity a party may hold through purchases on the secondary market, as it may just offer an invitation for smaller parties to stag the bidding with the intention of selling the capacity on to larger players at a markup (as generally happened on gas release schemes elsewhere in Europe).

CRE may also consider whether GdF Suez should underwrite the sale of capacity. One possible outcome is that buyers of capacity are unable to achieve customer switching or hub liquidity in sufficient volumes and GdF Suez continues to hold almost all supply contracts. GdF Suez would presumably meet commitments by holding long term interruptible capacity, which would carry a low likelihood of interruption and substantially reduce their cost base. If capacity was sold with a return option (i.e. the buyer could give up the capacity without penalty, then this might encourage take-up.

Q4 *Do you agree with the introduction of a minimum "acceptance" threshold proposed by the CRE in the commercialisation rules?*

We fully support the introduction of an optional minimum "acceptance" threshold. It would be a useful mechanism that will allow shippers to avoid being allocated volumes below the minimum required to fulfil their supply or trading obligations. For those who are happy to receive small volumes, it should be possible to set a zero threshold and rely on the secondary market to help reallocate that capacity into usable quantities.

Q5 *Do you agree with the application of the general terms and conditions of GRTgaz's transmission contract for any unsold capacities?*

Terms of access must be non-discriminatory. If any of the capacity to be released is currently held under legacy contracts, then the terms and conditions of access should be available on the same terms as the capacity that will continue to be held by GdF Suez. If it is released on the published terms and conditions and these are less favourable compared to the legacy contracts, then buyers of the released capacity will not be able to compete on equal terms. CRE may wish to use this opportunity to ensure that no legacy contracts remain.

However, the question implies that the allocation mechanism (rather than merely the access terms) should return to a position where capacity is freely bookable by GdF Suez i.e. that the party may release the capacity and repurchase a proportion of what is unsold. We suggest that the CRE considers further restrictions around this, for example that capacities are placed in an escrow account where parties other than GdF Suez retain some kind of priority allocation.

Q6 *Do you have any other comments on the allocation subscription rules proposed by GRTgaz?*

Although not directly manageable by the CRE, an important element of the commercialisation rules and the effectiveness of the remedies is the issue of upstream capacity associated with the remedies. The upstream capacity is directly linked to French border capacity and provides a credible route to market. To be able to deal effectively with the concerns related to the upstream, we trust that CRE is working together with the CREG, Bundesnetzagentur, Trustees and European Commission to create greater certainty and transparency. Some of the issues we have identified regarding upstream capacity include:

- Article 17 of the GRTgaz commercialisation document states that participants "may exercise all or some of their rights". It is not clear whether this means a shipper can refuse a part of his upstream allocation, or if he needs to negotiate with the upstream Transmission System Operator (TSO).This needs to be clarified.
- How exactly the capacity will be transferred and what usage rights this gives the purchasers also needs to be clarified. Capacity transfer is not adequately defined in German law, for example.
- The suggested Belgian route (Zeebrugge – Zelzate – East Zone – Blaregnies) seems inappropriate. It appears to allow GdF Suez to release their highest cost capacity bookings and to retain the lowers cost. It not only makes the standard West-South route far longer, but also practically uneconomic (at almost 300% more expensive). We are unclear why only this route is available and why for example capacity on the West-South route is not instead being made available by GDF Suez, or a general swap obligation priced at the weighted average cost of capacity.
- A presentation by GDF Suez on 6 Jan 2010 stated that in January 2016 the GRTgaz Deutschland capacity (for the Waidhaus – Medelsheim route) would change to FZK (from BZK), but without giving a reason, making it difficult to carry out an evaluation of the product.

All the above create unnecessary risks for a potential participant, which would be largely addressed if the upstream agreements are signed and their details communicated as soon as possible, and most importantly before the bidding process takes place. This would mean that bidders enter the bidding window without facing unnecessary risk which would reduce the attractiveness of bidding, reducing the chances of offered capacity being purchased by the market

At the core of the 'upstream capacity' issue is the uncertainty as to which legacy contracts are actually being 'released'. It would aid our understanding to have knowledge of the details of contracts GDF Suez are planning to release. This would allow us to understand the situation on the Belgian route, and why there is a point-to-point upstream (Waidhaus-Medelsheim) being offered for the Obergailbach entry point.

It is also important that all capacity (French and upstream) retains no worse rights as offered to any primary firm capacity available from the respective TSO. In some European markets capacity offered outside of the usual allocation process has been subject to a different set of terms and conditions, not allowing for flexibility such the re-sale or sub-letting of the capacity. This erodes the value of holding firm capacity rights and so should not be allowed.

Finally, as an efficient outcome will depend heavily on the success of the secondary capacity market, further revision to this market will be necessary. The existing regime of forcing capacity through Capsquare is not currently market-friendly.

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QQ7-11 *Commercialisation procedure proposed by Elengy*

Broadly, our principal concerns with the Elengy commercialisation procedure follow those detailed above for GRTgaz, notably:

- Products proposed offer too little flexibility and choice. There is a need for the creation of a range of products (long, medium and short term down to individual berthing slots) with multiple start dates. This will considerably extend the range of parties who are able and willing to bid for available capacity
- The release of capacity via the primary market under published terms and conditions suggests that some historical capacity under legacy terms may be retained. We invite CRE to investigate whether this is the case. Publication of any legacy terms would allow the market to evaluate the effect of any differences.

As the commitments and commercialisation rules are proposed to address fully all issues arising from 2006 Sector Inquiry, it is extremely important that the rules are sufficiently well-delivered and effective so as to remedy the Commission's concerns. We trust that the above points are helpful in this regard and would be pleased to discuss any of them at your request.

Yours sincerely,

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Regulatory Analyst

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