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Commission clears gas supply contracts between German gas wholesaler WINGAS and EDF-Trading

The European Commission has cleared two agreements whereby UK-based EDF Trading will supply gas to German gas wholesale company Wingas for a period of 10 years extensible by five further years. Clearance took place after the companies agreed to modify the notified agreements so as not to impair other wholesalers from being supplied by EdF Trading at the German border. The decision shows that long-term gas supply contracts in the wholesale sector can be compatible with European competition law.

Commenting on the decision, Competition Commissioner Mario Monti underlined: "The decision demonstrates that the Commission does not oppose long term gas supply contracts as such. This type of contracts has played an important role for Europe's supply security in the past and will in all likelihood continue to do so in future. However these contracts must not contain anti-competitive clauses and must not have any significant market foreclosure effects."

The contracts which have been notified to the European Commission provide for the delivery to WINGAS of two billion cubic meters of gas per year over a period of 10 years (starting in 1998/1999) which can be extended a further five years. WINGAS is a joint venture between BASF of Germany and the Russian gas producer Gazprom. The volumes supplied under the contracts correspond to approximately 20% of WINGAS' total annual gas purchases and slightly more than 2% of the total annual gas consumption in Germany.

The contracts, which date back from 1996, initially triggered competition concerns because of a mechanism leading to a reduction of the volumes bought by WINGAS, if EDF Trading were to sell gas into WINGAS' main supply territory. In this respect the Commission noted that the mechanism would not apply to sales of EDF Trading to incumbent German operators such as Ruhrgas operating in Wingas' supply area, whilst sales of EDF Trading to new market participants in the German market were not adequately exempted.

Following discussions between the parties and the Commission, the companies proposed to amend the contracts. The new mechanism foresees that EdF Trading can sell to all wholesalers – incumbents and new entrants – on the German border and thus creates a level playing field. In the light of this amendment, the Commission could clear the notified gas supply contracts. The Commission also considered that the notified contracts do not prevent Wingas from buying gas from other sources.