13 May 2015: Petroleum products in the French West Indies and Guiana

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The Autorité de la concurrence clears, subject to conditions, the acquisition of the Société Anonyme de la Raffinerie des Antilles (SARA) by the Rubis group

> Version française

The Autorité de la concurrence has reviewed the acquisition by the Rubis group of the sole refinery of the French West Indies and Guiana and has cleared the transaction subject to commitments.

Parties to the transaction

The French group Rubis is an international player in the energy sector and distributes, among others, fuels under the ViTO brand name and LPG under the Vitogaz and Gaz'L brand names. It also operates storage depots in different countries.

The purpose of the Société Anonyme de la Raffinerie des Antilles ("SARA") is to operate an oil refinery located in Martinique and all related facilities for the storage and transport of crude or refined petroleum products in the French West-Indies—French-Guiana region. SARA is currently jointly controlled by Total and Rubis, with Sol Petroleum Antilles ("Sol") holding a minority stake.

SARA's monopoly

The French West Indies-Guiana region has a number of specific characteristics. It is indeed an island territory, located a long distance from mainland France, belonging to the European Union. Consequently, it is bound to use fuel in accordance with European standards, which makes imports from neighbouring countries difficult. Bearing these constraints in mind, it was recognised that the pooling of logistics for supplying the region with petroleum products was the most appropriate system. As a result, there is a single company in the area, 'SARA', which has the monopoly on the import and resale of petroleum products and LPG and owns all the bulk transportation and storage infrastructure facilities.

This de facto monopoly has motivated the implementation of fuel-price regulation in each of the three French departments in question. Consequently Decree No. 2013-1314 of 27 December 2013 defines the pricing rules for oil and gas products and provides a framework for relationships between operators active on the wholesale and retail markets for distribution in the departments of Guadeloupe, French Guiana and Martinique.

Competition problems identified and the commitments made

In spite of existing regulations, and although the transaction does not lead to any overlap between the activities of Rubis and SARA, some important vertical effects were identified on the markets for the supply of semi-finished and finished petroleum products, the transport of petroleum products by pipeline, the storage of marine fuels and jet fuels and the supply of refined products in the French West Indies-French Guiana region, over which SARA holds monopolies. Commitments were made by Rubis to eliminate each of the risks of distortion of competition identified on the markets in question.

Therefore, the Autorité de la concurrence cleared the acquisition subject to commitments to remedy the identified competition problems.

- **The semi-finished and finished product supply market in the French West-Indies—French Guiana region**

A risk of a hike in SARA's supply costs as a result of increased additional costs, not capped by existing regulations, was identified. Under the regulations, the increase in SARA's supply costs would lead to an increase in the selling prices of petroleum products at all stages of distribution. To remedy this, Rubis committed to maintain SARA's supply costs for semi-finished and finished petroleum products at their current level, which has been stable for 3 years. This commitment neutralises Rubis's capacity to increase SARA's supply costs.

- **The oil products storage market in the French West Indies—French**

Guiana region

The Autorité highlighted a risk of refusal of or discrimination in the access to SARA's marine-fuel and jet-fuel storage capacities, which are not subject to any regulations. The effect of such practices would be to perpetuate SARA's monopolies over the supply of these products in the French West Indies—French Guiana region. In order to remedy this, Rubis has made the commitment that SARA will grant access to its storage capacities, under non-discriminatory conditions and at a cost-oriented price which includes fair return on capital, for the jet and marine fuels, to any operator requesting it, in accordance with SARA's tax and customs status. This commitment will notably enable competitors to import these products directly without going through SARA.

By contrast, no competition problem was identified for regulated fuels. In fact, Decree No. 2013-1314 already provides for the principle of non-discriminatory access to the storage facilities necessary for the distribution of petroleum products. Consequently, refusing access to SARA's storage facilities, or offering discriminatory conditions of access for these products would disregard the provisions of the decree and would trigger actions by the public authorities on that basis, such as an action before the Autorité de la concurrence.

- **The market for the transport of petroleum products by pipeline**

The Autorité identified a risk of discrimination in access to these infrastructures. In order to remedy it, Rubis has committed that SARA shall accept any request for access to these infrastructures, under non-discriminatory conditions and at a cost-oriented price that includes reasonable return on the capital.

- **The market for the supply of petroleum products and LPG**

It was not possible to eliminate all risk of discrimination in terms of prices or access. To remedy this, Rubis made the commitment that SARA would supply any third party with fuel and LPG under transparent and non-discriminatory conditions.

The commitments were made for a period of five years, renewable once; their application will be monitored by an independent trustee approved by the

Autorité de la concurrence.

> Full text of Decision 15-DCC-54 of 13 May 2015 on the acquisition of sole control of Société Anonyme de la Raffinerie des Antilles (SARA) by the Rubis company

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