of "object mains" is not based on existing jurisprudence concerning "area mains". The purpose of the exclusion of object mains from large parts of the Act in the sense of Art.110 lies in the fact that the application of the provisions on unbundling of affiliated enterprises and the control of public utilities is not appropriate if the business of the supply of energy is relatively limited according to the definition of Art.110(1), Nos 1–3 of the Act.

ELECTRICITY
Liability
Public utility supplying electricity—limitation of liability

Liability for Irregularity of Supply
Federal Supreme Court
May 26, 2004
VIII ZR 311/03

Electricity supply industry; Germany; Limit of liability

This case deals with limitation of liability, business terms and tariffs of a public utility engaged in the supply of electricity

Facts

The plaintiff, who operated an engineer's office, purchased electricity as a tariff customer from the defendant, a public utility. On July 1, 2002 the plaintiff's supply was interrupted. The plaintiff managed the situation by means of his own emergency electrical supply plant. After the elimination of the defect, the defendant connected the plaintiff; however, inadvertently, the connection was not made with the 220 volt network, but with the 400 volt network. The plaintiff asserted that this caused damage to the office's technical equipment amounting to some €26,000, which was the subject-matter of the dispute. It was not contested between the parties that the wrong connection was based on the fault of a defendant's employee. The defendant's liability insurance paid some €2,500, but the defendant and his insurer refused any further payments, based on Art.6 of the Regulation of the Business Terms Applicable to Customers of Public Utilities Engaged in the Supply of Electricity of 21 June 1979 ("AVBEltV").[1]

The relevant text of Art.6 of the Regulation states:

"(1) The electrical utility, which supplies a customer, is liable for damages based on contract or tort, which the customer suffers through the interruption of the supply or through irregularities in the supply, in the case of:

1. . . .
2. damages to a thing, unless that the damage is caused neither by intent nor by gross negligence of the enterprise or one of his agents or assistants of supply,
3. damages to the assets, unless that damage is caused neither by intent nor by gross negligence of the owner of the enterprise or an organ authorized to represent it or by a partner of the utility.

(2) In the case of damages caused to the customer by gross negligence the public utility's liability for damages caused to things or assets is limited to EUR 2,500 . . ."

The parties could not agree whether the defendant could rely on the limitation of his liability according to Art.6 of the AVBEltV.

Held

The Court held that the wrong connection with high voltage electricity amounted to an "irregularity" in the sense of Art.6(1) of the AVBEltV.

It upheld the view of the court of lower instance according to which the supply of electricity with too high a voltage constitutes an irregularity in the sense of Art.6(1) of the AVBEltV. The definition of the term "irregularity" would include deviations in the voltage and frequency of the electrical supply in so far as the threshold of tolerance in the sense of Art.4 of the AVBEltV would be exceeded. The supply of electricity with a voltage of 400 instead of 220, which was contractually agreed upon, constituted such a "deviation", which surpassed by far the threshold of tolerance. It would not make a difference whether the excessive voltage occurred during a current supply or in the case of the taking up of an interrupted supply. The reason for the irregularity would not matter. Only the effect on the damaged customer would be decisive.

Additionally, the Court, which referred to legal writers and commentaries, explained:

> "It is the purpose of the privilege concerning liability in the sense of Article 6 AVBEltV to limit the liability in cases, which relate to typical risks of the supply of electricity based on grids, in the interest of low prices. With regard to this purpose the limitation is always applicable without

1 Federal Gazette 1979, I, 684.

regard to the reasons for the disturbance if the customers suffer from damages to their property or assets by means of those typical risks, which are mentioned in Article 6(1) AVBEltV—the disturbance of the supply or the supply with electricity, which does not have the contractual voltage or frequency. A limitation of the privilege for damages, which a customer suffers from deviations of the voltage or frequencies in the currant supply, as asserted by the plaintiff, would not correspond with the purpose of the law. The risk, that too high a voltage of the supplied energy, which cannot be calculated and insured against, would cause an incalculable damage to a multitude of customers, does not only exist in the case of deviations during the current supply, but similarly in the present case where, after the interruption of the supply, the electricity is fed into the grids with too high a voltage."

Arnold Vahrenwald

Mexico

OIL

Legislation

Legal reform in pipelines and terminals sector

LT Finance; Mexico; Oil and gas industry; Pipelines; Regulatory bodies

The Mexican Government has recently submitted to Congress a Bill to amend the current Regulatory Law of Constitutional Article 27 in the Petroleum Sector (*Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo*), which regulates the oil and gas industry in Mexico. The Bill is aimed at allowing private investment directly in pipelines, terminals and other infrastructure for the transportation, storage and distribution of petroleum, liquids and other derivatives currently undertaken by the state oil monopoly, Pemex, who would continue to be the sole shipper in many of these facilities.

Given the rates of return generated by the production of crude oil, higher by far than any other line of business of the energy industry, Pemex has for at least two decades under-invested in various other sectors of the energy industry, from gas production to construction of refineries, from liquids terminals to maintenance of gathering and transportation pipelines for oil and other derivatives. As a result of this, the industry is in great need of investment on various fronts; it is no coincidence that south-east Mexico (mainly Veracruz and Tabasco) has seen so many incidents involving oil and gas gathering and transportation pipelines in the last couple of years, as these pipelines have not received appropriate long-term maintenance. The Government is now seeking private entrepreneurs to undertake such construction and refurbishment projects.

More than 41,000 kilometres of pipelines in Mexico require maintenance, and the ability of private parties to participate in infrastructure substitution and upgrade will not only be very important for the industry, but will also be a considerable boost to the Mexican economy, which is in need of stable jobs and additional funding. It will also bring leading edge technology from the international market to which Pemex may not have ready access.

The Bill to amend the Petroleum Law envisages vesting the Energy Regulatory Commission (*Comisión Reguladora de Energía*) with broad powers to regulate the transportation, distribution and storage of crude oil and petroleum derivatives, with the power to approve its terms of service, rates that may be charged and other relevant conditions.

Rogelio Lopez-Velarde and Jorge Jimenez

Netherlands

GAS

Gas transport

Tariffs for gas flexibility services

LT Dominant position; Gas distribution networks; Netherlands; Pricing

The Netherlands Competition Authority ("NMa") has recently published a draft decision containing a method for the setting of tariffs for gas flexibility services to be provided by Gas Transport Services ("GTS"), the Dutch gas transmission operator, for the next three years.

According to the Gas Act, the Competition Authority will determine the method for the setting of the tariffs for the provision of flexibility services by GTS as long as GTS is obliged to offer such services. GTS is only obliged to offer flexibility services as long as its former counterpart, Gasunie Trade & Supply, which is the producer of the Groningen gas field, has a dominant position on the market for flexibility services.

The Competition Authority has established that Gasunie Trade & Supply has and will continue to have in future such a dominant position. Therefore, the Competition Authority has drafted regulations for the setting of tariffs for the provision of flexibility services by GTS.

Interested parties had until October 26, 2005 to give their views on the draft decision. The Competition Authority has, so far, not taken the final method