France

ECONOMIC INDICATORS

Petrol distribution – nuclear power

Petrol distribution

The French network of leading brands now has only 9,886 petrol stations, which represents a loss of 5,842 stations in five years. The network leader is Total (with 3,470 outlets), then Elf Antar (1,761), Shell (1,455), Esso (1,207), BP (677), Mobil (567), Fina (502) and AGIP (247).

Self-service, which now accounts for 55.5 per cent of the leading brands network, is increasingly coming into question, given its inconvenience and the level of unemployment.

Large retailers have gained two percentage points of the market and now control 42.5 per cent of the total volume distributed in France.

At the same time it is important to note that while France had a total of 37,000 petrol stations in 1983, this figure fell to 24,500 in 1992 and to 19,500 in 1993.

The increase in distribution by large retailers can largely be explained by the fact that drivers give a high priority to the price factor, even if they think that the petrol sold is of a lower quality. This trend should continue in the future owing to higher monthly sales (rising by an average of 500 cubic metres per month), to the particular detriment of the 6,000 or so petrol stations which are not part of a brand network and of which 90 per cent have a turnover of less than 100 cubic metres per month.

Nuclear power

It is interesting to note the good performance of Framatome in the field of nuclear services, namely in the maintenance and modernisation of power stations, which accounts for 20 per cent of the company's sales. Framatome has in fact tripled its turnover during the past five years. The world market for maintaining and modernising power stations represents around F.Fr.40 milliards, of which France accounts for F.Fr.10 milliards and the United States F.Fr.18 milliards. It must be noted that in this sector Framatome is number two in the United States just behind Westinghouse.

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Germany

COMPETITION LAW
Federal Cartel Authority

Territorial demarcation in agreement struck down

Order of 18 April 1994
B 8-822000-N-139/94

Section 47 of the German Act against Restraints of Competition states:

> (1) The Federal Cartel Authority exercises the functions which are delegated to the public authorities of Member States according to Articles 88 and 89 of the Treaty of Rome . . .
> (2) In discharge of these functions the Federal Cartel Authority has the power which accrues to it in application of this Act. In particular, the Federal Cartel Authority has the power to prohibit unlawful agreements, decisions and concerted practices . . . furthermore, it may conduct the necessary investigations, even if it is involved in proceedings of the Commission of the European Communities. Also the procedural provisions of this Act are applicable . . .

Facts: Ruhrgas AG, Essen and Thyssengas GmbH, Duisburg are companies engaged with the regional and supra-regional supply of natural gas. Both undertakings belong to the leading public utilities which pursue the business of the importation of natural gas, the long-distance supply of gas and the supply of territorial public utilities. The companies concluded an agreement on territorial demarcation[1] according to which they agreed on the joint supply of the four important public utilities engaged with the distribution of gas in the cities of Duisburg, Düsseldorf, Cologne and Oberhausen and on the demarcation of their territories of supply. Exempted from this territorial demarcation were only a few big industrial customers.

Held: The Federal Cartel Authority held that the agreement on territorial demarcation and the obligation concerning the joint supply of the public utilities of the four cities violated Article 85(1) of the Treaty of Rome. The restriction of competition was held to affect inter-state trade with natural gas within the European Union because both undertakings import considerable amounts of natural gas from other countries of the European Union, such as the Netherlands and Denmark. In particular Thyssengas imports more than 50 per cent of its supplies from other member states. Accordingly, the Federal Cartel Authority prohibited the agreement according to section 47 of the German Act against Restraints of Competition. The Federal Cartel Authority found that the agreement also violated German anti-trust law because the obligations of both

1 Concerning agreements on territorial demarcation and anti-trust law, see Vahrenwald, 'Gas Supply in Germany and Anti-trust Law: § 103 of the German Anti-trust Act', [1993] 6 OGLTR 174 at 176 to 178.

undertakings concerning the joint supply of certain customers and the demarcation concerning territories in which none of the parties carries out the supply of gas did not fall within the class of those demarcation agreements in the sense of section 103(1) clause 1 of the German Act against Restraints of Competition which are exempted from the prohibition of cartels according to section 1 of the Act.

Comment: This is the first order of the Federal Cartel Authority under section 47 of the German Act against Restraints of Competition according to which the Federal Cartel Authority may prohibit agreements which violate Article 85(1) of the Treaty of Rome.

The Federal Cartel Authority's exercise of the functions according to section 47(2) of the German Act against Restraints of Competition is a mere administrative procedure.[2] In particular the procedural provisions are applicable which are contained in Part IV of the Act. The Federal Cartel Authority has no power to exempt an agreement from the prohibition contained in Article 85(1) of the Treaty. This remains the competence of the Commission of the European Union. The power of the Federal Cartel Authority is limited to the prohibition of the unlawful agreement according to section 37a of the German Act against Restraints of Competition.

The Federal Cartel Authority indicated that a demarcation agreement also violates section 1 of the German Act against Restraints of Competition and cannot be exempted from the prohibition provided for by section 103(1) clause 1 of the Act which concerns agreements on territorial demarcation, if none of the parties carries out the supply of gas or intends it. This view is controversial. It has been asserted[3] that agreements on territorial demarcation benefit from the exemption, if they relate to areas for which a supply is not even intended. This reasoning can be based on section 103(1) clause 2 of the Act which exempts those concession agreements from the prohibition of cartels in section 1 of the Act in which a territorial authority grants a public utility an exclusive right of way for the current or intended supply of gas. It may well be argued that the abstention of the legislator, to make the actual or intended supply a statutory requirement in clause 1 of section 103(1) of the Act, has to be interpreted in such a way that agreements on territorial demarcation will be exempted from the prohibition of cartels, even if they concern territories in which none of the parties supplies gas and where a supply is not even intended.

2 Klaue in Immenga and Mestmäcker, *Gesetz gegen Wettbewerbs-beschränkungen,* commentary, C.H.Beck, 1992, no.12 to § 47.
3 Vahrenwald, Note 1 above, at 178.

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Indonesia

PRODUCTION-SHARING CONTRACTS
Petroleum incentive package

More favourable terms offered to stimulate exploration in more remote areas

In January 1994 Pertamina, the Indonesian state oil company, announced, somewhat belatedly, the 1993 Petroleum Incentive Package. The Incentive Package is regulated by letter of the Minister of Mining and Energy No. 01/39/M.DJM/1994 dated 1 January 1994. The Incentive Package offers improved terms to oil companies exploring in frontier areas, as defined. This is the fourth incentive package announced by the Indonesian authorities since 1988, the previous most recent having occurred in August 1992. Before explaining the details of the Incentive Package, it is necessary to understand the legal framework that governs the operations of oil companies in Indonesia and the current state of the industry.

Indonesia is the major oil producer in South-East Asia and the only OPEC member in the region. The relative importance of oil and gas has declined in Indonesia since the nation embarked on an industrial diversification programme in the late 1980s. However, it is still Indonesia's flagship industry accounting for a forecast 27 per cent of state revenues for fiscal year 1994/1995. Although vast areas have not been thoroughly explored, Indonesia is considered by some as a mature area. There have been no major discoveries of oil for several years and new finds are not adequate to replace production from declining fields. The pace of industrialisation and the increasing domestic demand for petroleum has led to forecasts that Indonesia may become a net importer of oil by the end of the century.

Indonesia faces ever increasing competition for scarce exploration dollars from its regional neighbours, principally China and Vietnam, as well as the new opportunities available for oil exploration and development in the former Soviet Union. The recent incentive packages demonstrate Indonesia's awareness of the problem. However, the frequency of the packages may indicate that the appropriate solution has yet to be found. Critics castigate Indonesia's approach as reactive, only tinkering with the existing structure but not addressing whether the basic legal framework continues to be appropriate.

Most oil and gas exploration and production activities are conducted through production-sharing contracts (PSCs) concluded with Pertamina. Other