PRIVATISATION
Electricity
French EdF buys Light Company in a 14-minute auction

Light, the state-owned company which supplies electricity to the State of Rio de Janeiro, was sold on 21 May to a consortium formed by the French company EdF (Electricité de France) and the American AES Coral and Houston Industries Energy, represented by ING Barings. The auction lasted 14 minutes in total. This is reported to be the largest privatisation auction ever organised in Brazil. The competing groups were not officially formed until the night before.

The Federal Government put 6.2 billion shares on sale, equivalent to 60 per cent of the company's capital. Shares were divided into 623,450 lots of 10,000 each. 577,833 lots were sold; 214,133 to national private groups and 353,700 to foreign companies; 34 per cent of the total were acquired by the winning consortium led by EdF which will now own the majority of Light's equity control. BNDES-Par, a subsidiary of the National Bank for Economic Development (BNDES), owned by the Brazilian federal state and in charge of the privatisation process, acquired 9.14 per cent of the shares. CSN, a large, recently privatised iron and steel industrial complex, bought 7.25 per cent of the shares (CSN is Light's largest single customer and thus would have a significant means of influencing tariffs). The other main consortium competing for Light's control was led by Chilectra of Chile.

Buyers will pay the minimum price fixed by the Government (US$390.00 per group of 1,000 shares). Light's annual sales were equivalent to US$1.8 billion in 1995, a year when the company registered a net loss equal to US$110 million. In the first quarter of 1996, Light had a profit of US$62.5 million. The company is responsible for the transmission and distribution of 80 per cent of the electricity consumed by the state of Rio de Janeiro (9 per cent of the total national electricity demand).

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EC

ENERGY POLICY
Notification
Council Regulation imposes duty to inform Commission about energy sector projects

Council Regulation (EC) No. 736/96 of 22 April 1996
OJ L102/1 of 25 April 1996

The objective of the introduction of a common energy policy has prompted the Commission of the European Communities to gather information from Member States about investment projects in the petroleum, natural gas and electricity sectors of the economy. In order to obtain this information, persons and undertakings which plan such projects may be called on to communicate details to Member States, which have the duty to communicate to the Commission particulars of investment projects concerning the production, storage and distribution of petroleum and natural gas planned in their territory. A similar duty to notify investment projects is contained in the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community.

In the Recitals of the Regulation the need to obtain information about investment projects concerning petroleum refining, investment in desulphurisation plants for residues, gas oil, feedstock or other petroleum products is justified by their increasing importance in view of the strict quality standards to be adopted within the Community in order to control pollution. The Recitals refer also the fact that in the natural gas sectors of the economy, investment projects relating to underground and submarine transmission pipelines which constitute essential links in national or international interconnecting networks as well as in trans-European networks, are of interest to the Community. The Regulation relates also to the electricity sector of the economy but references to the related provisions are not contained in this report.

The investment projects to which the duty of communication attaches are listed in the Annex to the Regulation. In the case of the petroleum refining industry the relevant projects are:

- distillation plants with a capacity of not less than 1 million tonnes a year
- extension of distilling capacity beyond 1 million tonnes a year
- reforming/cracking plants with a minimum capacity of 500 tonnes a day
- desulphurisation plants for residual fuel oil/gas oil/feedstock/other petroleum products.

Excluded are chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products.

In the case of the natural gas industry the relevant projects concerning transport are:

- transfrontier gas pipelines and projects of common interest identified in the guidelines established under Article 129c of the Treaty on European Union, and
- terminals for the importation of liquefied natural gas.

Excluded are gas pipelines and terminals for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products.

Concerning distribution the relevant projects are:

- underground storage installations with a capacity of not less than 150 million cubic metres.

Excluded are installations for military purposes and those supplying chemical plants which do not produce energy products or which produce them only as by-products.

Article 1(2) of the Regulation imposes on persons and undertakings the duty to communicate details about investment projects to the Member States in whose territory they are planning to carry them out before 15 March of each year. This duty will not be imposed where a Member State decides to use other means of supplying the Commission with relevant information.

Article 1(1) of the Regulation imposes on Member States the duty to communicate to the Commission the information concerning investment projects referred to in the Annex as mentioned above and which relate to the production, transport, storage and distribution of petroleum and natural gas before 15 April of each year. Those projects must be notified on which work is scheduled to start within three years.

Article 1(3) to (5) of the Regulation explains that the communication shall indicate the volume of capacities in commission or under construction and those which are scheduled to be taken out of commission within three years. The calculation of the capacities or dimensions shall take into account all parts of a project which constitute a technically indivisible whole, and they shall cover investment projects of which major features such as location, contractor, undertaking, technical features and so on may be subject to further review or to final authorisation by a competent authority.

Article 2 of the Regulation establishes that the communication shall relate to:

- the precise purpose and nature of such investment
- the planned capacity or power
- the probable date of commissioning, and
- the type of raw materials used;

and concerning any proposed withdrawal from service, the communication shall relate to:

- the character and the capacity or power of the installations concerned, and
- the probable date when the installations will be withdrawn from service.

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Article 4 of the Regulation provides that information forwarded pursuant to the Regulation shall be treated as confidential.

or personal injury, Can.$1 million; (b) in respect of any other claims (i.e. property), Can.$500,000. Under the current regime, the calculations are in the range of Can.$120,000 and Can.$40,000 respectively.

Oil pollution liability and compensation

The amendments to the Canada Shipping Act with respect to oil pollution liability and compensation include changes which will increase the maximum compensation available to claimants in an oil pollution incident from about Can.$120 million to Can.$270 million. Compensation would be made available for oil pollution damage caused by empty tankers on the voyage immediately after the voyage with a cargo of persistent oil. Costs for preventative measures taken in anticipation of a spill from a tanker now would be recoverable under the Canadian regime.

A significant clarification is the new section 679.1 which sets out that the maximum liability of an owner of a ship other than a Convention ship with a tonnage less than 300 tonnes is an amount determined according to section 578 (see limitation of liability above). In the case of ships with a tonnage exceeding 300 tonnes, the amount is determined in accordance with Article 6 of the Limitation of Liability Convention 1976.

The amendments provide that where oil pollution damage from a ship results in impairment to the environment, the ship owner would be liable for the costs of reasonable measures of reinstatement. The new regime extends the right of action in Canada for pollution damage beyond the territorial sea to the 200 nautical mile exclusive economic zone (EEZ).

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ENERGY LAW
New legislation

Energy Law Reform Bill passes Cabinet

On 23 October 1996, the German Cabinet decided to introduce in Parliament the Energy Law Reform Bill prepared by the Ministry of Economic Affairs. Strong opposition from municipal politicians within the CDU ruling party had prevented an earlier decision of the Cabinet. The bill, which has now been approved in the form as proposed by the Economics Minister in May[1] will break up the closed supply territories of the utilities which dominate in the German electricity industry. Instead of introducing an express right to third party access, the Bill abolishes the exemption from the general rules of German cartel law, which the energy industry had until now.

The Bill will now be first discussed in the Chamber of Federal States (Bundesrat) which provides for a period of six weeks for deliberation. Thereafter, it will be referred to the lower Chamber of Parliament (Bundestag). During committee proceedings, a public hearing may be held in spring next year.

According to constitutional sharing of powers, the Bundesrat will have to consent to the Bill. As the government parties are in a minority position there, it is far from certain that the Bill will pass Parliament at all. At least some extended negotiation process between the chambers, as well as substantial changes, can be expected.

1 See [1996] 6 OGLTR D-63.

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UNFAIR TRADE PRACTICES
Comparative advertising

Failure to provide accurate comparison of overall costs

German Federal Supreme Court
1 February 1996
IZR 50/94

Facts: The plaintiff is a public utility engaged in the distribution of gas in Bavaria. It supplies some 50,000 customers. The defendant is a private association for the promotion of the distribution of heating oil. Its purpose is to inform the general public about the advantages of heating with oil. In 1992 the defendant published in the press circulars which contained comparisons of the prices of heating oil and natural gas without directly mentioning the plaintiff. One of the headlines was: 'Fixed day – check: natural gas on average 45% more expensive than heating oil'. Another headline said: 'Your heating oil may rise to these prices before it is more expensive than natural gas'.

The plaintiff alleged *inter alia* that the promotion campaign violated Article 1 of the German Act Against Unfair Trade Practices, which contains a general clause: 'Whoever commits acts in the business trade for purposes of competition which violate *bonos mores* will be liable for an injunction and damages'. The plaintiff asserted that a fair comparison of prices should not only include the purchase prices. It would be reasonable to include the full costs, which should also relate to the cost of the heating facilities. He applied for an injunction to restrain the defendant from publishing the advertisements and claimed damages which were caused by the publications. The plaintiff also claimed that the defendant should supply him with information about the distribution of the advertisements, in particular the circulation. The First