

Mr Ferriter said, however, that the IEA recommends that concrete measures be taken to liberalise the Belgian electricity and natural gas sectors and to improve energy efficiency. Belgium's natural gas and electricity industries are highly concentrated and integrated, and risk distorting energy markets. For the benefit of consumers, structural reforms are required. More competition should be promoted in the electricity and gas markets, including among distribution companies. Non-discriminatory access to the high pressure natural gas and high voltage electricity grids should be assured. Such conditions are necessary to create competitive, efficient and flexible markets.

With the coming of federalism in Belgium, significant responsibilities have been transferred to the three regional governments, particularly in the fields of rational use of energy, energy technology, research and development in energy and environmental protection. The IEA report encourages the regions to harmonise their programmes in these areas, particularly in energy efficiency, a cornerstone of national policy for reducing CO₂ emissions. Implementation, monitoring and evaluation of this policy should be conducted on a co-operative basis throughout the country. Further co-ordination between the federal and regional governments is needed to ensure that environmental protection targets are realistic, achievable and cost-effective.

Brazil

PRIVATISATION Gas distribution

Bahia gas to be sold during 1998

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The Brazilian Constitution of 1988 provided that gas distribution services could only be rendered by states or state-owned companies. Constitutional Amendment no. 5 of 1995 eliminated this restraint and permitted each state to provide local gas distribution directly or through concessions to public or private companies.

Following the amendment, Bahia state gas distribution company, Bahia-gás, like other regional distribution companies, is to be privatised.

Privatisation is scheduled for the first quarter of 1998. The State of Bahia, which is the controlling shareholder, will sell 51 per cent of Bahia-gás capital stock. Petrobrás, Bahia-gás' other shareholder, is to maintain its interest.

Bahia-gás' profit in 1997 is expected to be US\$4.5 million and it intends to develop its industrial and commercial client bases.

Germany

PIPELINES Right of way

*Right of Way for construction of
pipeline in ground controlled by a local
authority, alternatively right to
conclude a contract with
corresponding content
Federal Supreme Court
July 15, 1997
KZR 15/96*

Facts: The plaintiff is a new supplier of natural gas in the German market. On March 15, 1994 it concluded an agreement for the supply of natural gas with the K. company. The premises of the K. company are situated within the territory of the defendant, a territorial authority. The defendant distributes natural gas through an affiliate company. In order to comply with its contractual obligations, the plaintiff would have had to construct fixed mains of a length of 1.7km. The fixed mains crossed a way which was the property of the defendant. The defendant rejected the plaintiff's demand for the grant of a right of way to cross the way in the subsoil. The plaintiff brought a suit, claiming that the defendant should permit the laying and operation of fixed mains in the subsoil under his street to the premises of the K. company. Alternatively, the plaintiff claimed that the court should declare that the defendant was obligated to conclude a contract with the plaintiff which established a right of use.

Since the supply of natural gas was to begin on October 31, 1994 and since the plaintiff was not able to supply the K. company, the latter concluded a contract with another supplier.

The district court rejected the plaintiff's main claim but held that the alternative claim was well founded. The defendant appealed. Since the plaintiff's customer had concluded a contract with another supplier, the plaintiff demanded now that its alternative claim be settled. The provincial court decided in favour of the defendant. The plaintiff appealed to the Supreme Court.

Held: Upon appeal the judgment of the provincial court was partially reversed and the case was remitted to the Provincial Court. Against the view of the Court of Appeal the alternative claim was not settled through the alleged lapse of the plaintiff's interest in a declaratory judgment. The plaintiff's interest in a declaratory judgment concerning the alternative claim did not lapse. Even if the plaintiff definitively decided not to construct the fixed mains to connect the premises of the K. company with its network, its interest in a declaratory judgment, with the content that the defendant is obligated to conclude an agreement with the plaintiff establishing a right of use, still persists.

The interest is based on the plaintiff's chance of obtaining damages from the K. company, which would be substantially lowered if the K. company could

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Italy

COMPETITION Gas markets

Authority highlights lack of
competition

argue that the defendant was not able to start the supply, because it could not have constructed the connecting fixed mains due to the defendant's legitimate refusal to permit the right of way. Also, the plaintiff's chances of claiming damages from the defendant are affected by a decision concerning the defendant's obligation to conclude a contract, particularly taking into account that the defendant's refusal of the conclusion of a contract caused the plaintiff's inability to commence supply to the K. company on October 31, 1994.

On November 26, 1997 the Italian Authority for the Market and Competition (the "Authority") published the result of a three-year survey of the natural gas market. The survey focused on Eni (the partially privatised former national oil corporation), in particular its de facto monopoly of gas imports and distribution. It also looked at the vertically integrated structure of Eni in dealing with import, transport, storage and despatch activities.

The Authority for the Market and Competition highlighted that the lack of any competition conditions in the upstream stage, in particular as far as imports are concerned, represented the main distortion within the natural gas market. It was the Authority's opinion that the vertical nature of the Eni group structure (*i.e.* its subsidiaries Agip SpA and Snam SpA) and its involvement in all aspects of the gas industry constituted a restriction of competition. Natural gas is imported, produced, transported, stored and distributed in Italy predominantly by Eni through its subsidiaries Snam SpA and Agip SpA. Snam SpA, which holds a de facto monopoly in relation to import as well as to primary distribution sector, is incompatible with the transportation, storage and despatch activities carried out by the same corporation. In order to establish competition within the market, the Authority felt it essential to review Snam's structure by separating import and primary distribution from transportation, storage and despatch.

Furthermore, the Authority urged the adoption of several measures aimed at liberalising the gas market by the Ministry of Industry, the Ministry of Treasury and the Public Utilities Authority. Following the survey the Authority is now investigating Snam SpA in relation to the transportation prices. It is alleged that Snam may have abused its dominant position in the market.

In addition the Authority is presently investigating Eni and its subsidiary Agip in relation to the purchase of a plant in the Adriatic Sea. The sellers (Total, Merloni, Foster Wheeler and Energon) are alleged to have been induced to conclude the deal by the high transportation prices applied by Snam. A report is expected soon.

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Netherlands

OIL AND GAS SECTOR New legislation

Consolidating Bill before Council of
State

On November 28, 1997 a Bill consolidating existing mining legislation passed before the Cabinet prior to its consideration by the Council of State. This consideration will last some months and thereafter the Bill will be presented to Parliament.

Highlights of this Extraction Bill are:

The Act will apply both to onshore and offshore extraction. The Act will cover the exploitation of geothermal energy and the underground storage of materials (including hydrocarbons). With regard to minerals, the Act is applicable only to minerals at a depth starting from 100m below the earth's surface. For the exploitation of geothermal energy the level has been put at a depth of at least 500m below the surface.

The licensee becomes owner of the minerals by extraction. The granting of licences for extraction is in accordance with the system of the European Hydrocarbons Directive. In the Act a general obligation has been laid down to ensure a good performance of the activities. Certain procedures are obligatory whenever there is risk of movement of the soil.

Safety zones around mining installations will apply to offshore activities.

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Philippines

OIL SECTOR Legislation

Court ruling caused confusion

The Philippines Supreme Court surprised the Philippines Government on November 5, 1997, by declaring that the law deregulating the Country's oil sector was unconstitutional. The court held that the legislation inhibited "fair competition", encouraged monopolistic power and interfered with the free interaction of market forces. President Aramos may challenge the ruling, which if it stands threatens some US\$400m worth of new investment in the sector over the next two years.