

# PRESS RELEASE

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## **CMS secures victory for transport grid operators**

Düsseldorf – The Competition Senate of Düsseldorf Higher Regional Court has partly overturned notices issued by the German Federal Network Agency (BNetzA) in five landmark rulings. These notices had certified five operators of gas distribution networks, bayernets, GASCADE, GRTgaz Deutschland, ONTRAS Gastransport and terranets bw, as Independent Transmission Operators (ITO). The complaint lodged by the grid operators, who were advised by a CMS team, referred to statements in the certification notices according to which the senior staff of certain departments in the second tier of management should be subject to the statutory cooling-on and cooling-off provisions. These involve waiting periods that must be observed when employees of a vertically integrated energy supply company move to the ITO's management team (cooling-on period: three years) or when members of the ITO's management move to other companies of a vertically integrated energy supply company or to their majority shareholders (cooling-off period: four years).

The grid operators represented by CMS Hasche Sigle directed their complaint against the broad interpretation of these regulations by the German Federal Network Agency. According to the Agency, "in case of doubt, all persons in the second tier of management [shall be] included". Düsseldorf Higher Regional Court agreed with this criticism in its rulings and partly overturned the certification notices. The court found that the heads of the legal departments in the relevant companies were not subject to the cooling-off or cooling-on regulations. It held that they were not responsible for the operation, maintenance or development of the grid. According to the relevant legislation, the regulations in question would only apply if this were the case. Düsseldorf Higher Regional Court upheld the appeal in each case.

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