

CMS Hasche Sigle

Lennéstraße 7
10785 Berlin – Germany
T +49 30 20360 0
F +49 30 20360 1299
www.cms-hs.com

Arndt Hellmann
Head of Public & Media Relations
T +49 30 20360 1208
arndt.hellmann@cms-hs.com

press release

Date: 10.11.2011

1/2

CMS Hasche Sigle obtains landmark ruling for grid operators Federal Court of Justice: Use of electricity grid not free of charge

Stuttgart – The Competition Senate of the Federal Court of Justice (FCJ) has ruled that the courts may not set the charge for using power grids to transmit electricity at zero (judgment of 8 November 2011, Case Ref. EnZR 32/10). By doing so, the FCJ has overturned the second "0.00 decision" by Düsseldorf Higher Regional Court (HRC) (Case Ref. VI-2 U (Kart) 5/06). In the spring of 2010, Düsseldorf HRC had ordered a grid operator who had been sued by an electricity trader to repay the entire charge for use of the power grid in 2002.

Rolf Hempel, a partner in the Competition and Energy practices at the commercial law firm, represented the grid operator in this dispute from the start and throughout the various stages of the legal process. He also advised on the case before the FCJ.

The lawsuit related to a period in which charges for using power grids were not yet subject to *ex ante* regulation through official approval. Legislation requiring approval for grid charges was not introduced until 2005. Düsseldorf HRC had set the charge at zero, as it had already done in a previous ruling of autumn 2008 in another case involving a different grid operator. The denial of leave to appeal against this first "0.00 decision" was upheld by the FCJ at the time.

In the spring of 2011, the FCJ allowed an appeal against the denial of leave to appeal against the spring 2010 "0.00 decision" by Düsseldorf HRC. Following the oral

CMS Hasche Sigle is one of the leading commercial law firms. More than 600 lawyers serve their clients in nine major German commercial centres as well as in Brussels, Moscow and Shanghai. CMS is the organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. CMS provides a deep local understanding of legal, tax and business issues and delivers client-focused services through a joint strategy executed locally across 29 jurisdictions with 54 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,800 lawyers and is headquartered in Frankfurt, Germany.

CMS offices and associated offices: **Amsterdam, Berlin, Brussels, London, Madrid, Paris, Rome, Vienna, Zurich**, Aberdeen, Algiers, Antwerp, Beijing, Belgrade, Bratislava, Bristol, Bucharest, Budapest, Buenos Aires, Casablanca, Cologne, Dresden, Duesseldorf, Edinburgh, Frankfurt/Main, Hamburg, Kyiv, Leipzig, Ljubljana, Luxembourg, Lyon, Marbella, Milan, Montevideo, Moscow, Munich, Prague, Rio de Janeiro, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Warsaw and Zagreb.

For more information please visit our website www.cms-hs.com. For more information about CMS please visit www.cmslegal.com.

proceedings on 8 November 2011, the ruling of Düsseldorf HRC was then overturned. In the FCJ's opinion, setting a fair charge at zero euros is not an option. Düsseldorf HRC had previously corrected its own viewpoint as adopted in the two "0.00 decisions". The HRC will have to rule again on this competition and energy-related case, giving due regard to the FCJ's legal interpretation.

Contact:

Dr Rolf Hempel, Competition & EU

T +49 711 9764 308

E Rolf.Hempel@cms-hs.com

CMS Hasche Sigle is one of the leading commercial law firms. More than 600 lawyers serve their clients in nine major German commercial centres as well as in Brussels, Moscow and Shanghai. CMS is the organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. CMS provides a deep local understanding of legal, tax and business issues and delivers client-focused services through a joint strategy executed locally across 29 jurisdictions with 54 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,800 lawyers and is headquartered in Frankfurt, Germany.

CMS offices and associated offices: **Amsterdam, Berlin, Brussels, London, Madrid, Paris, Rome, Vienna, Zurich**, Aberdeen, Algiers, Antwerp, Beijing, Belgrade, Bratislava, Bristol, Bucharest, Budapest, Buenos Aires, Casablanca, Cologne, Dresden, Duesseldorf, Edinburgh, Frankfurt/Main, Hamburg, Kyiv, Leipzig, Ljubljana, Luxembourg, Lyon, Marbella, Milan, Montevideo, Moscow, Munich, Prague, Rio de Janeiro, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Warsaw and Zagreb.

For more information please visit our website www.cms-hs.com. For more information about CMS please visit www.cmslegal.com.