



Gas Regulation

in 32 jurisdictions worldwide

Contributing editors: Florence Ninane, Alexandre Ancel
and Liliana Eskenazi

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Law
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Argentina Hugo C Martelli <i>Martelli Abogados</i>	8
Australia Andrew G Thompson, Stephanie Rowland and Carol Mao <i>Minter Ellison Lawyers</i>	14
Austria Thomas Starlinger and Stefan Korab <i>Fiebinger Polak Leon Rechtsanwälte GmbH</i>	21
Belgium David Haverbeke and Wouter Vandorpe <i>Lydian Lawyers</i>	28
Brazil Giovanni Loss <i>Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados</i>	34
Chile Felipe Bahamondez <i>Bahamondez, Alvarez & Zegers</i>	42
Colombia Sandra Manrique and Johanna Cajigas Caicedo <i>prietocarrizosa</i>	51
Croatia Mirosljub Maćešić, Ivana Manovelo and Miran Maćešić <i>Maćešić & Partners</i>	58
Czech Republic Václav Rovenský and Tomáš Sequens <i>Kocián Šolc Balaščík advokátní kancelář sro</i>	65
Denmark Per Hemmer, Johan Weihe and Rania Kassis <i>Bech-Bruun</i>	72
Faroe Islands Per Hemmer, Johan Weihe and Rania Kassis <i>Bech-Bruun</i>	78
France Florence Ninane, Liliana Eskenazi and Alexandre Ancel <i>Allen & Overy LLP</i>	83
Greece Ioannis Vassardanis <i>Alexander Vassardanis & Partners Law Firm</i>	90
Greenland Per Hemmer, Johan Weihe and Rania Kassis <i>Bech-Bruun</i>	97
Ireland Alex McLean, Patrick McGovern and Jennifer Burke <i>Arthur Cox</i>	104
Italy Pietro Cavasola and Matteo Ciminelli <i>CMS Adonnino Ascoli & Cavasola Scamoni</i>	111
Malaysia Mohamed Ridza Abdullah <i>Mohamed Ridza & Co</i>	117
Mexico Rogelio López-Velarde and Amanda Valdez <i>López Velarde, Heftye y Soria, SC</i>	125
Nigeria Sina Sipasi and Olasumbo Abolaji <i>ÁLEX</i>	133
Norway Sondre Dyrland and Per Arvid Schøyen <i>Kluge Advokatfirma DA</i>	139
Pakistan Yousaf Khosa, Zainab Aziz and Amna Nasir <i>Rizvi, Isa, Afridi & Angell</i>	146
Poland Piotr Spaczyński and Anna Piotrowska <i>Spaczyński, Szczepaniak i Wspólnicy spk</i>	154
Portugal Mónica Carneiro Pacheco and Marisa Apolinário <i>CMS Rui Pena & Arnaut</i>	162
Spain Margarita Hernando Martínez-Arroyo <i>Lupicinio Abogados International Attorneys</i>	168
Tanzania Charles R B Rwechungura and Kamanga W Kapinga <i>CRB Africa Legal</i>	174
Thailand Albert T Chandler, Stefan Chapman and Christopher Kalis <i>Chandler & Thong-ek Law Offices Limited</i>	180
Turkey Serra Başoğlu Gürkaynak and Ali Ozan Karaduman <i>Mehmet Gün & Partners</i>	186
United Kingdom David Tennant, Sam Szlezinger and Rebecca Owen-Howes <i>SNR Denton UK LLP</i>	192
United States Robert A James, Michael S Hindus and Julie D Hutchings <i>Pillsbury Winthrop Shaw Pittman LLP</i>	204
Uzbekistan Babur Karimov and Nodir Yuldashev <i>Grata law firm</i>	212
Venezuela Miguel Rivero and José Alberto Ramírez <i>Hoet Pelaez Castillo & Duque</i>	219

Portugal

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Description of domestic sector

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

As a consequence of the transposition of Directive No. 2003/55/EC, the Portuguese natural gas sector suffered a substantial reorganisation in 2006. Alongside the unbundling of the activities of transport, distribution and trading, the liberalisation of the trading activity to create a free market regime was one of the major measures taken.

There is no domestic production of natural gas in Portugal, although there is some prospecting of shale gas currently taking place in the south of Portugal.

Natural gas enters the Portuguese territory through gas pipelines (the Campo Maior gas pipeline and, since 2009, also through the Valença do Minho pipeline), or through the Sines Terminal. Natural gas is then transported by high-pressure gas pipelines that run from Leiria-Braga, Leiria-Campo Maior, Setúbal-Leira, Sines-Setúbal, Braga-Tuy, Portalegre-Guarda, and Coimbra-Viseu. According to the Regulatory Entity for Energy Services' Annual Report for the European Commission, during 2010, 4.9 billion cubic metres (bcm) of gas were transported through the national network. In total, there were 1,267km of gas pipelines at the beginning of 2011.

Natural gas from Nigeria or from the spot markets arrives at the LNG Terminal at Sines transported by tankers. At the terminal the gas is stored and later regasified for introduction into the network (through gas pipelines) or it may be transported in tank trucks as LNG and later regasified in autonomous facilities for reception, storage and LNG regasification (known as Unidades Autónomas de Gás or UAG). The Sines terminal currently has two working tanks, with a regasification capacity of 5.3bcm/year. The construction of a third tank, which will allow for the expansion of the terminal's capacity up to 8.5bcm/year, has started in 2009, and it is expected to be completed in May 2012.

There are also storage facilities (subterranean caverns) located in Guarda Norte, Carriço, in the municipality of Pombal, where there are presently four working caverns, and a Memorandum of Understanding has been signed for the construction of four more subterranean caverns in this location.

Finally, consumers may purchase natural gas through organised markets or through bilateral trading. The gas is supplied by means of distribution networks.

- 2 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentages of the country's natural gas needs are met through domestic production and imported production?

Portugal does not produce natural gas, importing 100 per cent of the consumed gas from the preferential markets of Algeria and Nigeria (LNG). According to the data made available by the Regulatory

Entity for Energy Services (ERSE) in its annual report for the European Commission, in 2010, natural gas consumption totalled 57.8 terawatt hours (TWh), which represents an increase of 9 per cent on 2009 consumption.

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

Government intervention in this sector of the economy has not disappeared since 2006. In fact, in spite of the privatisations programme that the government has been putting in place in the last decade, it has maintained an important role as the main regulator of the sector, namely in respect of access to the networks, quality of supply and determining prices and tariffs.

Regarding the national level of regulation, it is possible to differentiate between two sub-levels:

- state regulation that is exercised by government bodies (the Directorate General for Energy and Geology (DGEG)) and;
- sub-state regulation that is carried out by independent regulatory entities.

At the latter level, alongside horizontal regulation (through the Portuguese Competition Authority – Autoridade da Concorrência or AdC), there is also vertical regulation (specialised) that is carried out by ERSE, and by other entities (such as the Portuguese Securities Commission – Comissão de Mercado dos Valores Mobiliários (CMVM)).

DGEG depends on the Ministry of the Economy. ERSE, however, is an independent administrative entity with administrative and financial autonomy and its own assets. Besides its functional independence, ERSE is independent from the government as well. In fact, ERSE's board members are independent, not being subject to instructions or specific guidelines. Their independence is also guaranteed by the appointment method of the members of the board (a resolution of the Ministers' Council, following a proposal by the minister of the economy of a number of people with the adequate qualifications and renowned technical and professional competence) and by the duration of their mandates (five years with one possible renewal period).

On the other hand, members of ERSE's board may not be removed from their positions before the end of their mandate, unless the member becomes permanently incapacitated or a supervening incompatibility occurs; there is a serious breach undoubtedly committed by the relevant member while carrying out the board's functions or in fulfilment of any other obligations inherent to his or her position; or an unappealable sentence is passed convicting said member for any crime that may give grounds to question his or her suitability for the exercise of the office.

Furthermore, the board may only be dissolved by resolution of the Ministers' Council in one of the following situations: serious irregularities in the body's functioning; or considerable and unjustified excess in the expenditures in comparison to those foreseen in the budget.

With regard to ERSE's independence from companies operating in the regulated sectors, the appointment to ERSE's board of a person who has been a member of a governing body of a company within said sectors in the past two years is forbidden. It is also not possible for a person who is or has been a worker or permanent collaborator with management or the leadership of a company within the natural gas and electricity sectors to be appointed to ERSE's board. Similarly, after the end of their mandate, members of the board are prevented from holding any position or providing any service to companies within the regulated sectors.

Besides these specific impediments, the members of the board may not have financial interests or shareholdings in the companies within the regulated sectors.

DGEG's decisions may be challenged by appeal to the Minister of the Economy. In any case, decisions from any of the regulatory entities may always be challenged by court proceedings.

Regulation of natural gas production

- 4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

Not applicable.

- 5 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Not applicable.

Regulation of natural gas pipeline transportation and storage

- 6 Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

Transportation activities and subterranean storage are exercised according to the public service concession regime. According to this regime, the ownership of the transportation and storage assets belongs to the concessionaire during the concession's period, being transferred to the state at the end of the concession.

Natural Gas pipeline transportation is owned by REN Gasodutos, SA (wholly owned by REN – Redes Energéticas Nacionais SGPS SA) which is the concessionaire of the national network. Storage facilities are currently owned by REN Armazenagem (wholly owned by REN – Redes Energéticas Nacionais SGPS SA) and Transgás Armazenagem, SA (a company within Galp Energia Group).

The transportation and storage operators are subject to requirements of direct and indirect unbundling from other activities of the National System of Natural Gas. The unbundling requirements were recently made harder by the transposition of Directive No. 2009/73/CE, especially for the transportation operator. The transportation operator is not subject to a legal certification by ERSE of the compliance with the unbundling obligations.

- 7 Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

Transportation and storage activities are exercised according to the public service concession regime. Transport activity is performed exclusively by one company in the whole continental Portuguese territory: REN Gasodutos, SA is the current (and the unique) transport network operator. REN Armazenagem, SA and Transgás Armazenagem, SA are the subterranean storage operators. Both these activities are regulated by DGEG and by ERSE. The regulation includes supervision, namely supervision of the enforcement by the operators of legal and regulatory provisions applicable to the concession contract (which, mainly, are DGEG's competence) and,

on the other hand, the promotion of competition between operators, assuring access to the networks in equal circumstances (ERSE's competence).

The projects of construction of natural gas transportation pipelines and storage facilities are subject to an approval of the Ministry of the Economy and to DGEG's licence. The civil works, on the other hand, are subject to a licensing procedure involving several administrative entities.

- 8 How does a company obtain the land rights to construct a natural gas transportation or storage facility?

The transportation network and storage facilities are public concessions granted by the state, and therefore are subject to a specific regime, namely concerning rights for the use of the land.

The approval of the projects grants the party the right to use public land or goods belonging to the state and the municipalities for the installation or passage of integral parts of the network, as well as to request the expropriation, by urgent public utility, or the establishment of easements regarding immoveable assets necessary for the installation of the network or storage facility.

- 9 How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

Free access by third parties to natural gas infrastructure (for example, the storage facilities infrastructures or transmission network) is one of the cornerstones of the Natural Gas National System. As a result, it is the operators' duty to grant all system users access to the infrastructure on a non-discriminatory and transparent basis.

Right of access to the infrastructure is granted by entering into a written agreement regarding the use of such infrastructure. Pursuant to these agreements, the operators have the right to receive compensation for the use of their facilities and inherent services. This compensation is set out by ERSE in the Tariffs Regulation specifically for each type of infrastructure. Setting out regulated tariffs assures not only equal treatment for the infrastructure users, avoiding the risk of discrimination between said users, but also that the amount of the tariffs is not subject to over-inflated increases defined by the relevant operators as a consequence of the networks being natural monopolies.

Recently, Decree-law 77/2011, of 20 June introduced the possibility of granting of concessions of subterranean storage in which the access to the storage facilities is subject to prices freely negotiated by the parties.

With regard to the transportation system operator, the general structure of the regulated tariff for transmission network use is based on the capacity used, expressed in euros per kWh/day by month, and by the energy price difference between peak periods and off-peak periods, expressed in euros per kWh.

The general structure of the tariff for the use of subterranean storage comprises the following prices:

- price of the injected energy, expressed in euros per kWh;
- price of the extracted energy, expressed in euros per kWh; and
- daily price for stored energy, expressed in euros per kWh.

- 10 Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

As a general principle, operators may reasonably refuse to grant access to their infrastructure based on a lack of capacity or lack of connection.

As a consequence of the transposition of Directive No. 2009/73/CE, the transmission system operator was given the obligation to elaborate, every two years, a long term plan for the development

of the transportation and storage facilities as well as the reception, storage and regasification of LNG system. The current and predicted demand of customers is a key factor to the elaboration of this plan, which is approved by the government. The operators shall comply with the terms and deadlines stated in the plan, being this obligation supervised by ERSE.

Furthermore, the government has the power to determine the operators to expand the transportation and storage facilities as well as the reception, storage and regasification of LNG system, in the situations mentioned in the concession contract.

Additionally, despite the absence of specific legal provisions, we believe that the transportation system operator has the obligation to undertake the necessary improvements to the infrastructure, directly bearing the costs of that investment, whenever it is economically viable, and, in any case, it is compelled to perform said investment whenever there is a potential client interested and willing to pay for it. The current Commercial Relations Regulation (in particular section 1 of article 87 and article 102) points to this direction.

The costs of this expansion are taken into account in the determination of the regulated tariffs.

- 11** Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Not applicable.

- 12** Describe the contractual regime for transportation and storage.

As stated above, transport and storage activities are regulated activities. Therefore, the general terms and conditions for the contracts for the use of the infrastructures are approved by ERSE. These contracts are valid for one gas year (the period between 12pm on 1 July and 12pm on 30 June of the following year) and shall be automatic and successively renewed for equal periods. The terms and conditions of the contracts of use of the transmission system and storage facilities are regulated by ERSE, respectively by Directive No. 3/2011, of 7 October and Regulation No. 24145/2007 of 22 October.

Regulation of natural gas distribution

- 13** Describe in general the ownership of natural gas distribution networks.

During the concessions or licence periods, the distribution networks are owned by the concessionaires, being transferred to the state at the end of the concession contract or of the licence. There are also some parts of the infrastructure that are privately owned (for example, private distribution networks).

- 14** Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

Distribution activity may be performed in accordance with a concession regime or by means of a public service licence. The distribution networks' operators have exclusive rights regarding the relevant parts of the national territory within the concessions or the licences for local distribution. Nevertheless, local distribution licences regarding areas where there is already a regional distribution concession may be exceptionally granted if the concessionaire considers that it is unable to cover the relevant area, due to technical or economical reasons duly justified and acknowledged by the assigning entity. In 2006, along with the unbundling process regarding distribution and supply, the concession contracts and the licences pursuant to the distribution of natural gas were adapted.

However, the 11 relevant concessionaires and licensees, most of which are companies within the Galp Energia Group, kept their concessions and licences. All of them are private companies, subject to private law.

The distribution operator is subject to a legal, organisational and decision-making unbundling from other activities of the National System of Natural Gas.

The operation of a natural gas distribution network is a regulated activity, being subject to the ERSE's regulation.

Undertakings are subject to public service obligations relating to security, environmental protection and consumers protection, as set out in article 8(2) of Decree-Law No. 140/2006, of 26 July. These obligations are similar to those applicable to the concessionaires that carry out transport, reception, regasification and storage activities.

- 15** How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Access to the distribution grids depends on the prior conclusion of an agreement for its use and on the payment of the regulated tariffs published by ERSE in the Tariffs Regulation. Said agreement's terms and conditions are also approved by ERSE. The entering into of said agreement is not required for retail traders who belong to a company that is a party to the concession contract or holds distribution licences with fewer than 100,000 connected customers and has not unbundled its supply activity from the distribution activity. The gas distributor's obligations include provision of information to consumers, switching suppliers, quality of supply and metering.

- 16** May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

Similar to the transport and storage operators, the distribution operators may, as a general principle, reasonably refuse to grant access to their infrastructure based on a lack of capacity or lack of connection. But there are some exceptions.

As a consequence of the transposition of Directive No. 2009/73/CE, the distribution system operator was attributed the obligation to elaborate, every two years, a medium term plan for the development of the distribution facilities. The current and predicted demand of customers is a key factor to the elaboration of this plan, which is approved by the DGEG. The operators shall then comply with the terms and deadlines stated in the plan, being this obligation supervised by ERSE.

Moreover, the Commercial Relations Regulations establish that the distribution network operators that operate under a concession contract shall provide connection to the grid to consumers with a total annual consumption inferior to 10 000m³ (domestic consumers) whose installation is situated within the area of influence of the network (which is at the moment established as comprising a 100 metre radius around the network), as well as to consumers whose annual consumption exceeds that value, as long as the consumer undertakes to pay for the grid to be built or for the additional cost of the supply of natural gas to its installation. Although the regulation does not extend this obligation to domestic consumers whose installation is situated out of the area of influence of the network, we deem that this obligation exists whenever it is economically viable, and, in any case, if there is a potential client interested and willing to pay, so long as the service to existing consumers is not hindered.

Furthermore, the government has the power to determine the operators to expand distribution facilities, in the situations mentioned in the concession contract.

The costs of this expansion are taken into account in the determination of the regulated tariffs.

17 Describe the contractual regime in relation to natural gas distribution.

The general terms and conditions of the agreements for the use of the network are approved by ERSE. These agreements are valid for one gas year (the period comprehended between 12pm on 1 July and 12pm on 30 June of the following year) and shall be automatic and successively renewed for equal periods, unless they are rejected by the system user, which shall give 60 days' notice as to the term of the agreement or its renewal. The terms and conditions of such agreements were approved by ERSE through Directive No. 3/2011, of 7 October.

Regulation of natural gas sales and trading**18** What is the ownership and organisational structure for the supply and trading of natural gas?

As a result of Directive No. 2003/55/EC, the supply shall be legally separated from other activities of the natural gas sector. These restrictions do not apply to a distribution operator where the integrated natural gas undertaking in question serves less than 100,000 connected customers.

It should be noted that supply of natural gas is also carried out by suppliers of last resort. Since 2011, the activity of supply (except the supply of last resort which depends on a licence granted by DGEG) is only subject to a prior registration.

Last resort companies perform a regulated activity and are legally compelled to supply clients entering into supply agreements under predetermined terms and conditions established by ERSE and being paid through regulated tariffs also established by ERSE. Since 31 March 2011, regulated tariffs to final customers whose annual consumption exceeds 10,000m³ were abolished, so at this moment only clients with an annual consumption equal or less than 10,000m³ can be provided by the supplier of last resort.

Clients that are not supplied by the supplier of last resort can choose their supplier with whom they can negotiate the terms and conditions of the services provided, including the price.

19 To what extent are natural gas supply and trading activities subject to government oversight?

Suppliers are subject to a prior registration or licensing procedure (supplier of last resort) from the nearest competent administrative authority (DGEG), which is a body of the Ministry of Economy. Otherwise, the oversight and regulation of said activities is carried out by ERSE, for instance about some information duties that these companies are obliged to fulfil towards ERSE (for example, information related to prices).

Please note that these companies are also subject to national competition law.

20 How are physical and financial trades of natural gas typically completed?

Physical and financial trades of natural gas are typically completed through bilateral contracts entered between suppliers and buyers.

There are still no organised markets for gas (within the Iberian market there are already organised markets for electricity trading).

21 Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Wholesale or retail buyers purchase natural gas from the supplier, which takes on the responsibility for the gas's availability to its clients. The supplier thus acts as an intermediary between the client and the infrastructures operators, entering into the necessary agreements

for the use of the grids and paying regulated tariffs set out in the Tariff Regulation on behalf of its clients. All rights and obligations, namely those regarding the granting of guarantees, regulated services and compensations for breaches in the quality standards, may, as well, be transferred from the clients to the suppliers.

A supplier may choose to provide other services jointly or additionally to the provision of natural gas. Thus, for example, there are suppliers in the Portuguese market who jointly provide natural gas and electricity to their clients.

Regulation of LNG**22** What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

There is currently only one LNG terminal in Portugal, located near the port town of Sines. This terminal is, since 2006, owned by REN Atlântico, SA, a company within the REN Group. REN Atlântico, SA entered into a public service concession contract with the Portuguese state granting it the performance of reception, storage, regasification and delivery of LNG to the national natural gas transmission network. Under said contract, REN Atlântico, SA also performs the loading and dispatching of tank trucks and marine tankers.

23 Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

Building LNG facilities is subject to a licensing procedure (including environmental licensing) involving a number of administrative authorities, municipalities included.

Operation of LNG facilities is subject to the public service terms and conditions set out in the public service concession contract. Said operation and activity is also subject to ERSE's regulation according to the terms specified above.

24 Describe any regulation of the prices and terms of service in the LNG sector.

The access to the LNG Terminal at Sines depends on entering into an agreement for the use of the infrastructure, as well as on the payment of the relevant tariff approved by ERSE. The general terms and conditions of said contract were approved by ERSE through regulation 24145/2007 of 22 October.

The tariff for the use of the LNG reception terminal, storage and regasification includes the following prices:

- price for the regasification capacity used, expressed in euros per kWh/day, by month;
- energy price, expressed in euros per kWh;
- daily price for the energy stored, expressed in euros per kWh; and
- pre-established price for the loading of tank trucks, expressed in euros per loading operation.

Mergers and competition**25** Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

The entity responsible for the prevention and punishment of anti-competitive or abusive (manipulative) practices is the Portuguese Competition Authority (AdC).

Nevertheless, the legal competition framework establishes that the AdC shall work with and consult other regulatory authorities in areas where their supervision powers overlap. Such is the case in the natural gas sector, which is regulated and supervised by ERSE.

Update and trends

2011 witnessed the transposition of the Third Gas Directive, approved by Directive No. 2009/73/EC, which introduced amendments to the legislation approved in 2006. This transposition marked the deepening of the unbundling, the increase of competition and the powers of the national regulator (ERSE) and the strengthening of consumer protection.

It was also in 2011 that the Portuguese government, subject to an international programme of financial assistance, was compelled to proceed with a major privatisation programme in the Portuguese energy sector (electricity and natural gas), at the same time eliminating some of the rights that it still had in a number of the

former public owned companies, such as 'golden shares'. As regards tariffs, on 31 March 2011 the government has concluded the end of the regulated tariffs to final customers (essentially domestic customers) whose annual consumption exceeds 10,000m³, subjecting them to a free price system. There was also approved a schedule for the abolishment of the remaining regulated tariffs – tariffs for customers whose annual consumption exceeds 500m³ will be abolished from 1 July 2012, and the remaining from 1 January 2013 onwards. To moderate the effects of this reform, as well as the rise in energy prices, the government also created a social tariff for especially vulnerable customers.

26 What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

The substantive standards applicable under Portuguese law are similar to the ones applicable at the community level.

As under European Community competition law, pursuant to Portuguese law, there are two main practices that are prohibited:

- agreements or concerted practices between undertakings and decisions of associations of undertakings; and
- the abuse of a dominant position by an undertaking, which has as its object or effect the prevention or restriction of competition within the Portuguese market.

In regards to the conducts described in the first point above, such conducts may be deemed justified (and therefore exempted from the application of the prohibition) if they:

- contribute to improve the production or distribution of goods and services or promote technical or economic progress;
- allow users of such goods and services to obtain a fair share of the resulting benefits;
- do not impose on undertakings restrictions that are indispensable to reach the objectives of the conduct; and
- do not afford such undertakings the possibility of eliminating competition in respect to a substantial part of the relevant market.

Pursuant to Portuguese law, the block exemption regulations approved at community level are also applicable in terms of national competition law.

There is no such mechanism for justification or exemption of a conduct that is deemed as an abuse of dominant position.

In accordance with Portuguese competition law, an undertaking will be deemed dominant if it does not have significant competition in the relevant market or assumes preponderance over its competitors, that is, if it is able to act independently from its competitors, customers and consumers.

The market share of an undertaking is an important factor to determine if a dominant position exists. There is a presumption of dominance if an undertaking has a market share that exceeds 50 per cent. However, there may be cases where an undertaking has a lower market share, but may be deemed dominant if other factors come into play. Certain barriers for new players to enter the relevant market, such as ownership of patents, well-developed distribution systems or obligatory trading partner, may be taken into account when assessing dominance.

Portuguese law additionally forbids and punishes a practice known as abuse of economic dependence, in which it goes further than the EU protection. This happens when an undertaking abuses the economic dependence of a supplier or a customer, namely, where the supplier or customer in a vertical relationship is not in a dominant position and where the customer that does not have an equivalent alternative for the supply of such good or service, whereby Portuguese Competition Law effectively extends the application of the abuse of dominance rationale to such vertical relationships.

27 What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

The Portuguese Competition Law establishes that the authority of the AdC is threefold: to supervise, to regulate and to enforce.

Pursuant to the Portuguese Competition Law, when exercising its supervision and enforcement powers, the AdC enjoys the same rights and powers and is subject to the same duties as the Portuguese criminal police.

28 Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

The AdC is the authority responsible for merger control in Portugal and the procedure is governed by the Portuguese Competition Law.

According to Portuguese law, any merger or concentration that meets one of the following thresholds must be notified to the AdC:

- market share: creation or reinforcement of a market share exceeding 30 per cent on the national market for a particular good or service or on a substantial part of it; and
- turnover: an aggregate turnover, in Portugal, of more than €150 million, as long as each of at least two of the undertakings concerned achieve a turnover of more than €2 million in Portugal.

According to the Portuguese Competition Law, the main criteria to be taken into account when assessing a merger or concentration is if such merger leads to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the Portuguese market or a substantial part thereof.

The review of the merger begins with an assessment phase (Phase I) to be completed within 30 business days as of the date the notification becomes effective. During this phase, if the AdC requests additional information or documents, or the correction of any elements provided, its request will suspend the time limit of 30 days. The suspension will end on the first business day after receipt of the information requested.

Within the 30 business days time limit the AdC will decide:

- that the concentration is not subject to prior notification; or
- not to oppose the concentration; or
- to initiate an in-depth investigation if it considers that the concentration may create or strengthen a dominant position preventing effective competition on the market.

A non-opposition decision may, however, include the imposition of remedies and commitments aimed at guaranteeing compliance with and ensure the maintenance of effective competition in the market.

The in-depth investigation (Phase II) shall not take more than 90 working days as from the decision mentioned in the third point above, unless the AdC requests additional information or documents or the correction of the information already provided, in which case the aforementioned time period is suspended until the information or documentation requested by the AdC is provided.

At the end of Phase II, the AdC may decide:

- not to oppose to the concentration;
- to prohibit the concentration, ordering, if the concentration has already been implemented, appropriate measures to re-establish effective competition, particularly the demerging of undertakings or assets or the cessation of control; or
- to adopt a non-opposition decision subject to remedies or commitments designed to maintain effective competition on the market.

The lack of a decision by the AdC within the above-mentioned periods will be considered as a decision of non-opposition to the concentration.

It should be mentioned that the Portuguese Competition Law is in the process of change, which may have, as a consequence, the modification of the above mentioned procedure.

- 29** In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

The restrictions arise from the method of establishing the tariffs and the costs that are allowed to be included.

- 30** Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

The sole existing restrictions concern the purchase of shares of companies which are the concessionaires of the national transport network, storage infrastructures and LNG terminals. In fact, no one may hold, directly or indirectly, more than 10 per cent of the share capital of each company that is the concessionaire of said infrastructures. This restriction is decreased to 5 per cent in respect of entities (national or foreign) that already perform activities connected with the natural gas sector. These restrictions do not apply to the state, to companies controlled by the state and to the company who operates the transportation network or controls the operator. On the other hand, said restrictions, regarding the concessionaire of storage infrastructures and LNG terminals, are also not applicable to companies responsible for the construction of new storage facilities (subterranean caverns) and of new LNG terminals, which are subject to new concession contracts after July 2006.

Besides the aforementioned restrictions, no other specific limitations to the transfer of shares apply solely to the natural gas sector.

International

- 31** Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

As a result of the European open market, there are no limitations regarding the purchase of interests in the natural gas sector by foreign

companies, other than those that apply indistinctively to national and foreign companies. However, as most activities comprehended in said sector are performed under a concession contract, it is common for these contracts to submit the transmission of shares in the relevant companies to authorisation by the competent government member. Failure to request said authorisation renders the transaction null and void.

When transposing the Third Package of Directives, the Portuguese legislator did not address the matter of the control of transmission system operators by companies from third countries and the notification to the Commission (article 11). It should be noted that the application of article 11 of Directive No. 2009/73/CE is only mandatory from 3 March 2013. Thus, recently, a Chinese and an Oman company purchased, respectively, 25 per cent and 15 per cent of REN, the transmission system operator.

- 32** To what extent is regulatory policy affected by treaties or other multinational agreements?

As Portugal is a member of the European Union, natural gas regulation is highly influenced by Community Law.

The legislative package enacted in 2006, which deeply restructured the natural gas sector, derives directly from the Second Gas Directive No. 2003/55/EC, which sets out the common rules for the natural gas internal market. As a member state, Portugal was compelled to transpose said Directive.

The same occurred with the Third Gas Directive, approved by the Directive No. 2009/73/CE, which demanded Portugal to introduce some adjustments in its legislation, namely in what concerns the unbundling requirements, the powers of the national regulator and the rights of customers.

- 33** What rules apply to cross-border sales or deliveries of natural gas?

There are no specific rules. The general regime applies.

Transactions between affiliates

- 34** What restrictions exist on transactions between a natural gas utility and its affiliates?

Not applicable.

- 35** Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

Not applicable.

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