



Gas Regulation

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Florence Ninane, Alexandre Ancel and Jean-Yves Ollier



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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 deep restructuring 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 measures taken (supplier of last resort is, however, subject to regulation). There is no domestic production of natural gas.

Natural gas enters the Portuguese territory through the Campo Maior gas pipeline, more specifically through the international interconnections, or through the Sines Terminal. Natural gas is then transported by high-pressure gas pipelines that run from Leiria-Braga, Leiria-Campo Maior, Setúbal-Leiria, Sines-Setúbal, Braga-Tuy, Portalegre-Guarda, and Coimbra-Viseu. In total, there are 1,248km of gas pipelines. During 2009 4.68bcm (billion cubic metres) of gas were transported through the national network (Regulatory Entity for Energy Services' Annual Report for the European Commission).

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. A Memorandum of Understanding for the construction of four more subterranean caverns in this location was recently signed.

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 ERSE (Regulatory Entity for Energy Services) in its Annual Report for the

European Commission, in 2009 natural gas consumption totalled 50.6TWh (terawatt hours), which represents a decrease of 5.4 per cent on 2008 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 after 2006. In fact, when the state abandoned its role as a player in the natural gas sector, it took on, as happened in other countries, the role of arbiter by means of regulation of certain activities in the sector (reception, storage and regasification of LNG, storage facilities, transport, distribution and supplier of last resort, logistic operation regarding the switching of suppliers and organised market management), namely in respect of access to the networks, quality of supply and determining prices and tariffs. Thus the only activity that is not directly subject to regulation, being exercised in a competitive market, is (free) trading.

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 takes place; 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 regards 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 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.

Transport 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 which is part of the Galp Energia Group).

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.

Transport 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 only) 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 transport 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 soil.

The approval of the projects grants the party the right to use public goods or goods belonging to the state and the municipalities for the establishing or the passing of integral parts of the network, as well as to request the expropriation, by urgent public utility, or the establishment of easements regarding immovable assets necessary for the establishing of the integral parts 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 (eg, 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 the said 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 in the Tariffs Regulation specifically for each type of infrastructure.

Tariffs regarding access to the networks and storage facilities are determined by ERSE, thus being regulated tariffs. 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.

With regard to the transport network operator, the general structure of the tariff for transport 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. Despite being set out in Directive No. 2003/55/EC that member states may take the necessary measures to assure that the natural gas companies that refuse to grant access to the networks based on lack of capacity or on lack of connection shall undergo the necessary improvements, whenever this is economically viable or when the potential customer is interested in paying for it, this legal provision has not been transposed to Portuguese legislation.

However, despite the absence of specific legal provision, in our opinion the operators should undertake the necessary improvements to the infrastructure, directly bearing the costs of that investment, whenever it is economically viable, and, in any case, are compelled to perform said investment whenever there is a potential client interested and willing to pay for it.

There are, however, rules pursuant to the connections to the networks that set out that the charges connected with the network to be built, as well as with changes in the existing connections, shall be borne by the entity requesting them.

- 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 such contract were approved by ERSE through regulation 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 grids 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 (eg, 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 ten 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 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?

Similarly to transport and storage operators, distribution operators may reasonably refuse to grant access to their grids in the event of lack of capacity. Despite the absence of specific legal provision, it is our opinion that operators should undergo the necessary improvements in the infrastructures, directly bearing the costs of that investment, whenever it is economically viable, and, in any case, are compelled to perform said investment whenever there is a potential client interested and willing to bear the relevant costs.

The existence of means to solve congestion in the distribution networks is foreseen. These means are put forward by the operators (in coordination with the operator of the transport networks and the operator of the natural gas system with which the network is interconnected) and approved by ERSE.

There are no requirements for distributors to limit service to existing customers in order to serve new ones.

- 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 regulation 1677/2008 of 15 January.

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, supply and trading companies shall be legally separated from other companies operating in 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 also be noted that supply and trading of natural gas is carried out by trading companies and also by suppliers of last resort companies. For both types of trading, a licence granted by DGEG is necessary. Last resort companies perform a regulated activity and are legally compelled to supply clients, entering into supply agreements under predetermined terms and conditions. They are also subject to public service obligations. Conversely, free trading companies are entitled to negotiate and define the terms and conditions of the services provided, although they are also subject to public service obligations.

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

Supply and trading activities are subject to licensing by the competent administrative authority (Directorate General for Energy and Geology, DGEG), which is a body of the Ministry of Economy. Otherwise, the oversight and regulation of said activities is carried out by ERSE but only in what concerns suppliers of last resort and organised markets' management. Although, there is no regulation in respect of free trading, there are some information duties that these companies are obliged to fulfil towards ERSE (eg, 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.

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.

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

Update and trends

From January 2010, for the first time in Portugal, all consumers (including household consumers) are free to purchase gas from the supplier of their choice. This change leads to a new stage in the process of total liberalisation of the sector in our country, while at the same time it constitutes a challenge for all the entities involved (regulators, market players and consumers). We must point out that even though there was such a major change in the regulatory framework, this change didn't fully translate into everyday life, given that currently only 50 per cent of the wholesale market is operating as a free market, and an estimated 97 to 98 per cent of household consumers are still subject to regulated tariffs. However, efforts to create a fully operational, transparent and competitive market are still underway. For instance, last June a decree-law was published that put an end to the regulated tariffs for the sale of natural gas to customers with a consumption over than 10,000m³ per year (decree-law 66/2010). Therefore, after 31 March 2011, the sale of natural gas to

these customers will be subject to a regime of free prices.

Furthermore, during 2010 ERSE (Regulatory Entity for Energy Services) also approved several regulations with the main objective of promoting competition between the market players and stimulating the market. These included a mechanism of incentive for the existence of regulated exchanges of liquefied natural gas in Sines Terminal; and a regulation that declares available, for commercial purposes, 15 per cent of the maximum technical capacity of the subterranean caverns located in Guarda Norte, Carriço, which corresponds to 323GWh.

What about the nearer future? From 3 March 2011, Directive 2003/55/EC will be revoked by the new Directive 2009/73/EC, which establishes a set of principles aiming to strengthen the independence of the transmission system operator. This will not, however, demand a great change. In fact, in Portugal, ownership unbundling for the activities of transport, reception, storage and LNG regasification and subterranean storage has been implemented since 2006.

market, such as ownership of patents, well-developed distribution systems or obligatory trading partner, may be taken into account when assessing dominance.

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.

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 responsible for the transport network. On the other hand, said restrictions 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 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. 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. On the other hand, there is also a legal limitation to the ownership of shares in companies that perform the activities of transport, subterranean storage and operation of the LNG terminal. In said companies, no one may hold more than 10 per cent of the share capital and that limit is lowered to 5 per cent in the event that the shareholder is a company that already is a player in the natural gas sector, be it national or foreign. Consequently, while there are some limitations, there is no discrimination based on whether the purchaser is domestic or foreign.

- 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.

- 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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