

Gas Regulation

Contributing editors

David Tennant, Adam Brown and Liam O'Flynn



2019

GETTING THE
DEAL THROUGH 

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Dentons UKMEA LLP

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Preface

Gas Regulation 2019

Seventeenth edition

Getting the Deal Through is delighted to publish the seventeenth edition of *Gas Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Angola, India and Austria.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, David Tennant, Adam Brown and Liam O’Flynn of Dentons UKMEA LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
February 2019

Portugal

Mónica Carneiro Pacheco and Bernardo Cunha Ferreira

CMS Rui Pena & Arnaut

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.

The Portuguese natural gas sector has been undergoing a consolidation of the liberalisation commenced in 2006 with the unbundling of the activities of transport, distribution and supply. In 2012, Decree-Laws 230/2012 and 231/2012, both of 26 October, completed the transposition of Directive 2009/73/EC into Portuguese law by reinforcing the provisions regarding independence and unbundling of supply activities and the operation of transmission networks; and assigning new powers to the national regulatory entity, reinforcing its independence in carrying out its functions of regulating, monitoring and certifying entities.

Currently, competition has started to emerge in the retail sector and there have been many infrastructural improvements, which have strengthened the network and delivered greater security of supply. Although Portugal has faced some reduction in consumption (following the economic crisis) the sector has registered some advances and improvements during 2016 and 2017. In 2017, natural gas consumption increased to 69.7 TWh (data made available by Redes Energéticas Nacionais SGPS SA (REN)), which represents a 6.9 per cent increase in comparison with the previous year and it is the highest value registered since 2011.

There is no domestic production of natural gas in Portugal, although there is some shale gas prospecting currently taking place in central Portugal. Therefore, the natural gas consumed in Portugal comes from third countries (Algeria and Nigeria) either through high-pressure pipelines or marine tankers (LNG).

In relation to transmission, Portugal has opted for full ownership unbundling of the transmission activity. REN Gasodutos, SA (the transmission system operator) operates the national transport network, while the activities of reception, regasification and storage of LNG are operated by REN Atlântico, SA. The activity of subterranean storage of natural gas is performed by REN Armazenagem, SA and Transgás Armazenagem, SA. All these activities are performed through public service concession contracts entered into with the state that regulate the rights and obligations of the parties.

The distribution networks are operated by several private companies.

Portugal's natural gas supply market has been fully liberalised since January 2010. Since then, customers have been free to choose their supplier. According to the last information available, since 2015, 70,000 households changed their supplier. The number of customers in the liberalised markets showed an average of 0.4 per cent growth each month. This tendency is naturally decreasing and less household changes are expected in 2019 than in previous years. The most important suppliers are EDP Comercial, Galp Energia Group, Endesa, Iberdrola, Gold Energy and Grupo Gás Natural Fenosa.

In order to grant households all the necessary information and in order to manage the supplier-switching process ensuring that such switch is expeditious, simple, transparent and based on simple procedures and following the provisions of the Portuguese Budget Law of 2017 (Law No. 42/2016 of 28 December) the Portuguese government has approved Decree-Law No. 38/2017 of 31 March 2017, which created

the Logistics Operator for Switching Suppliers, which is executed by ADENE, the Portuguese Agency for Energy.

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

Portugal does not produce natural gas. Imports come mainly from a few long-term contracts held by Galp with Algeria (through Spain) and Nigeria (imported as LNG). See question 1 regarding current gas consumption. According to REN's forecast (included in the investment plan submitted in 2015), an increase of 1.3 per cent (per year) is expected for the period between 2016 and 2025.

Government policy

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

The domestic natural gas sector is a regulated sector, namely in respect of access to the networks, quality of supply and determining prices and tariffs (although it is undergoing a process of phasing-out of end-user regulated natural gas tariffs, expected to occur by December 2020, as per Ministerial Order No. 144/2017 of 24 April 2017).

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 independent regulation that is carried out by independent regulatory entities.

At the latter level, alongside horizontal regulation (through the Portuguese Competition Authority (AdC)), there is also vertical regulation (specialised) that is carried out by the Regulatory Entity for Energy Services (ERSE) and by other entities (such as the Portuguese Securities Commission).

The DGEG sits under the Ministry of Economy. Its primary functions are to issue, amend and withdraw registers for natural gas supply and to oversee the security of supply.

The regulation of access to the networks, quality of supply and determination of prices and tariffs are attributed to ERSE, which can also impose fines on energy companies for non-compliance with the laws and applicable regulations. ERSE is an independent administrative entity with administrative and financial autonomy and its own assets. Besides its functional independence, ERSE is also independent from the government. In fact, ERSE's board members are independent, and not subject to instructions or specific guidelines.

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

Regarding the unconventional natural gas sector, which is currently in a preliminary stage of research and data collection, there is no specific legislation regulating the exploration and production of shale gas in Portugal. Therefore, this is subject to the same legal framework that applies to the prospecting of and exploration for petroleum (eg, Decree-Law No. 109/94 of 26 April 1994), regulated by the DGEG.

Without prejudice of ERSE's inspection competencies, in accordance with the Portuguese Budget Law for 2017, the government is authorised to proceed with a reallocation of the inspection

competencies within the energy sector. To date, such legislation has not been approved.

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.

6 Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

As previously stated, there is no exploration for natural gas in Portugal. Activities of storage of natural gas and LNG are performed under a public concession contract (see question 8), under which the grantees are obliged to provide bank guarantees or a cash deposit in an amount of €5 million.

Regulation of natural gas pipeline transportation and storage

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

Portugal has two natural gas storage facilities: the Carriço underground storage – with a maximum working volume of 300 million cubic metres of natural gas, a nominal daily withdrawal capacity of 7.14 million cubic metres and a daily injection capacity of up to 2 million cubic metres – and LNG storage at the Sines terminal with a combined storage capacity of 390,000 cubic metres, roughly a storage capacity of 240 million cubic metres of natural gas.

Transportation activities and storage (subterranean storage and LNG storage at the Sines terminal) are exercised according to a public service concession regime. According to this regime, the ownership of 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 wholly owned by REN, which is the national network concessionaire. Subterranean storage facilities are currently owned by REN Armazenagem (wholly owned by REN) and Transgás Armazenagem (a company within Galp). REN Atlântico (wholly owned by REN) owns the facilities for the reception, regasification and storage of LNG.

Transportation and storage operators are subject to requirements of direct and indirect unbundling from other activities of the National System of Natural Gas (SNGN).

8 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 a public service concession regime. Transport activity is performed exclusively by one company in the whole continental Portuguese territory: REN Gasodutos is currently the only transport network operator. REN Armazenagem and Transgás Armazenagem are the subterranean storage operators. REN Atlântico is the operator of the Sines terminal. All these activities are regulated by DGEG and ERSE. The regulation includes supervision, namely of the enforcement by the operators of the legal and regulatory provisions applicable to the concession contracts (which are, mainly, in the DGEG's competence) and the promotion of competition between operators to assure access to the networks in equal circumstances (ERSE's competence).

Projects involving construction of natural gas transportation pipelines and storage facilities are subject to an approval from the government and to the DGEG's licence. Civil works are subject to a licensing procedure (including environmental licensing) involving several administrative entities (namely, municipalities).

To enforce compliance with its decisions, the regulator (the DGEG and ERSE) shall promote administrative and infringement procedures and apply for fines and accessory sanctions. For this purpose, the entities have broad powers, in particular to require additional information from the operators, to proceed to inspections of the sites or question representatives of the operators and to seize documentation and equipment. In addition, these entities may communicate to other authorities any situation that may give rise to any other infringement procedure concerning other matters.

9 How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

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

The method for obtaining land rights to construct natural gas distribution network infrastructure is broadly similar to what is mentioned above.

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

Access by third parties to the natural gas infrastructure (eg, the storage facilities infrastructures or transmission network) is one of the cornerstones of the SNGN. As a result, it is the operator's 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, 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 them, 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.

Decree-Law 230/2012 opened up the possibility of concessions for underground storage that benefit from a system of negotiated access.

11 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 2009/73/EC, 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 the LNG system. The current and predicted demand of customers is a key factor in the elaboration of this plan, which is approved by the government. Operators shall comply with the terms and deadlines stated in the plan, with this obligation being supervised by ERSE.

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

Additionally, the transportation system operator has the obligation to undertake necessary improvements to the infrastructure, directly bearing the costs of that investment, whenever it is economically viable. In any case, the operator is compelled to perform the investment

whenever there is a potential client interested in and willing to pay for it.

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

12 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.

13 Describe the contractual regime for transportation and storage.

As stated above, transport and storage activities are regulated activities. Therefore, the general terms and conditions of contracts for the use of infrastructures are approved by ERSE. These contracts are valid for one gas year (the period between 12am on 1 July of the current year and 12pm on 30 June of the following year), and shall be automatic and successively renewed for equal periods.

Regulation of natural gas distribution

14 Describe in general the ownership of natural gas distribution networks.

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

15 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 can be performed through a concession or 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 owing to technical or economic 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 Galp, 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 SNGN.

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

Undertakings are subject to the public service obligation relating to security, environmental protection and consumer protection, as set out in article 8(2) of Decree-Law 140/2006, of 26 July 2006, as amended. These obligations are similar to those applicable to the concessionaires that carry out transport, reception, regasification and storage activities.

To enforce compliance with its decisions, ERSE shall promote administrative and infringement procedures and apply for fines and accessory sanctions. For this purpose, ERSE is entitled to broad powers, in particular to require additional information from the operators, to proceed to inspections of the sites and to question representatives of the operators, and to seize documentation or equipment. In addition ERSE may communicate to other authorities any situation that may give rise to any other infringement procedure concerning other matters.

16 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 execution of an agreement for its use and on the payment of the regulated tariffs

published by ERSE. The agreement's terms and conditions must also be approved by ERSE. Therefore, neither the rates nor the agreements can be freely modified by the parties. The execution of an agreement is not required for retail traders who belong to a company that is party to a concession contract, or that 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.

17 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 transport and storage operators, distribution operators may, as a general principle, reasonably refuse to grant access to their infrastructure based on lack of capacity or lack of connection.

As a consequence of the transposition of Directive 2009/73/EC, 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 in drafting this plan, which is approved by the government following an opinion issued by ERSE. The operators shall then comply with the terms and deadlines stated in the plan, this obligation being supervised by ERSE.

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

Additionally, the distributor operator has the obligation to undertake necessary improvements to the infrastructure, directly bearing the costs of that investment whenever it is economically viable. In any case, the operator is compelled to perform the said investment whenever there is a potential client interested and willing to pay for it.

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

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

The general terms and conditions of agreements for the use of the network must be approved by ERSE. These agreements are valid for one gas year, and shall be automatically 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.

Regulation of natural gas sales and trading

19 What is the ownership and organisational structure for the supply and trading of natural gas?

The Portuguese natural gas supply market has been fully open since January 2010. Therefore, customers can buy natural gas from the supplier they choose, with which they agree a supply contract that has to follow some parameters established by law (for the protection of the consumer). The prices are set freely. There are still, however, suppliers of last resort who are obliged to supply household consumers (with an annual consumption lower than 10,000 cubic metres) until the end of 2020 (as per the recent Ministerial Order No. 144/2017) and, after that, to supply economically vulnerable consumers as defined by law. In this case, the tariffs are set by ERSE. Suppliers of last resort are also obliged to supply consumers whose supplier has been prevented from exercising its activity, and also consumers who do not have the possibility of choosing a supplier because there is no supplier in their region.

20 To what extent are natural gas supply and trading activities subject to government oversight? What authorisations are required to engage in wholesale trading of gas?

Suppliers are subject to a prior registration or licensing procedure (supplier of last resort) by DGEG. Otherwise, the oversight and regulation of said activities is carried out by ERSE (eg, regarding some information duties that these companies are obliged to fulfil towards ERSE, such as information related to prices).

Note that these companies are also subject to national competition law.

Update and trends

The energy sector in Portugal, in particular the gas sector, has seen several changes in recent years. Since 2010, EU Directives were imposed and the market was liberalised, which currently allows about 1.3 million consumers to choose their supplier.

At the same time, gas consumption has reached record highs, with a 25 per cent increase in natural gas consumption. The period of economic growth in Portugal has contributed to this.

21 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 into between suppliers and buyers.

In recent years, Portugal has taken a number of steps towards market opening and integration with Spain. It abolished transmission exit fees in the interconnection with Spain in June 2012 and Spain reduced the exit price (towards Portugal) in cross-border tariffs.

In 2015, after several years of negotiation and preparatory work between the Portuguese and Spanish authorities, an Iberian organised market for gas was implemented through the creation of MIBGAS, SA. The creation and implementation of MIBGAS has the following objectives:

- increasing the security of supply through market integration;
- increasing the level of competition, reflecting the larger size of the market and the increase in the number of participants;
- simplifying and harmonising the regulatory framework in both countries; and
- encouraging the efficiency of regulated and liberalised activities as well as market transparency.

Owing to the Spanish political crisis, the MIBGAS system was blocked in 2016. However, at the end of 2016, both the Portuguese Energy Secretary of State and the Spanish Energy Minister debated the full implementation of MIBGAS. To date, few measures have been taken in order to reactivate and boost the implementation of MIBGAS for the next few years. Recently, Galp mentioned in an internal note that the 'conclusion of the MIBGAS is a fundamental measure for the development of the natural gas market'.

22 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 and retail buyers purchase natural gas from the supplier, which takes on the responsibility for gas availability to its clients. The supplier thus acts as an intermediary between the client and the infrastructure operators, entering into the necessary agreements for the use of the grids and paying the 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 compensation for breaches in the quality standards, may also 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

23 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 and owned by REN Atlântico since 2006. REN Atlântico entered into a public service concession contract with the state that granted it the performance of reception, storage, regasification and delivery of LNG to the national natural gas transmission network. Under said contract, REN Atlântico also performs the loading and dispatching of tank trucks and marine tankers.

The LNG terminal can load up to 4,500 tanker trucks a year and its configuration allows receipt of LNG not only from the Atlantic basin

(Nigeria, Norway, and Trinidad and Tobago), but also from sources such as Qatar and Egypt, thereby diversifying supply and increasing security of supply, while providing flexibility for smaller market players to also access the terminal.

According to information provided by ERSE in a report on the analysis of natural gas market investments, dated June 2018, the Sines LNG terminal will be subject to several investments over the next few years, namely a set of new projects of internal reinforcement of the terminal, in the amount of €8.997 billion.

24 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. Operation and activity is also subject to ERSE's regulation according to the terms specified above.

To enforce compliance with its decisions, ERSE shall promote administrative and infringement procedures and apply for fines and accessory sanctions. For this purpose, ERSE is entitled to broad powers, in particular to require additional information from the operators, to proceed to inspections of the sites or to question representatives of the operators and to seize documentation and equipment. In addition, ERSE may communicate to other authorities any situation that may give rise to any other infringement procedure concerning other matters.

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

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 have been approved by ERSE.

Mergers and competition

26 Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

The entity responsible for the prevention and punishment of anticompetitive or abusive (exploitative or exclusionary) practices is the AdC.

Nevertheless, the legal competition framework establishes that the AdC shall work in close cooperation 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.

27 What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

The substantive standards applicable under Portuguese law are similar to the ones applicable at EU level (articles 101 and 102 TFEU). As with EU competition law, two main practices are prohibited under Portuguese competition law:

- agreements or concerted practices between undertakings, and decisions of associations of undertakings that may have as their object or effect the prevention, restriction or distortion of competition in Portugal or in a significant part thereof; and
- the abuse of a dominant position by one or more undertakings within the Portuguese market.

Portuguese competition law also prohibits the abuse of economic dependence, an exploitative conduct practised by non-dominant undertakings.

With regard to the conduct described in (i), and similarly to article 101(3) TFEU, such conduct may be deemed justified (and therefore exempted from the application of the prohibition) if it:

- contributes to improving the production or distribution of goods and services, or promotes technical or economic progress;
- allows users of the goods and services to obtain a fair share of the resulting benefits;

- does not impose on undertakings restrictions that are indispensable to reach the objectives of the conduct; and
- does not afford such undertakings the possibility of eliminating competition with respect to a substantial part of the relevant market.

There is a presumption that agreements that would be considered justified under the EU block exemptions, but that do not have an effect on Community trade, would also be considered justified under Portuguese competition law.

With regard to (ii), abuse of a dominant position, there are no relevant specificities in Portuguese competition law comparable with those under EU competition law with regard to the criteria used for determining the existence of a dominant position: a company enjoying a position of economic strength, capable of behaving to an appreciable extent independently of its competitors, customers and ultimately consumers, will be considered to have a dominant position. Further, there are no similar block-exempted practices for the conduct of undertakings that are in a dominant position, which, therefore – under the special responsibility that is vested upon dominant entities – requires that all actions be assessed for an eventual detrimental effect on competition and, should that be the case, for the strength of the efficiencies generated by such practices.

28 What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

Regarding practices that could be construed as anticompetitive or manipulative (described in question 27), the AdC has the power, on the one hand and on its own initiative, to initiate sectoral inquiries from which (non-binding) recommendations could ensue; or, on the other hand, ex officio or following a complaint, to initiate proceedings against companies (or associations or individuals) that could be involved in anticompetitive practices.

Should the AdC determine the existence of an anticompetitive practice, it may impose sanctions on the infringing undertakings (fines and other sanctions), as well as remedies of a structural or behavioural nature. The AdC also has the power to adopt interim measures.

29 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, which includes the approval or refusal of mergers or other changes in control over businesses in the sector.

According to Portuguese law, a concentration that meets one of the following thresholds must be notified to the AdC prior to its implementation:

- market share: creation or reinforcement of a market share equal to or greater than 50 per cent on the national market for a particular good or service, or on a substantial part of it;

- turnover: an aggregate turnover, in Portugal, of more than €100 million in the previous financial year, as long as each of at least two of the undertakings concerned achieved a turnover of more than €5 million in Portugal; and
- mixed criterion: the creation or reinforcement of a market share equal to or greater than 30 per cent but smaller than 50 per cent on the national market for a particular good or service, or on a substantial part of it, as long as each of at least two of the undertakings concerned achieved a turnover of more than €5 million in Portugal in the previous financial year.

Regarding the substantive appraisal of a merger, the main criterion considered when assessing a concentration is whether such concentration is likely to create a significant impediment to effective competition in the Portuguese market or of a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position.

By way of an extraordinary appeal by the notifying party or parties, a merger that has been prohibited by the AdC may exceptionally be authorised by a duly grounded decision of the Council of Ministers, upon proposal from the Minister of Economy, when the benefits resulting from the concentration for the pursuit of fundamental strategic interests to the national economy concretely outweigh the disadvantages for competition inherent in its implementation. Such authorisation decision should also set conditions and obligations that aim at minimising the impact for competition that results from its implementation and is to be published in full in the official journal.

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

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

31 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 that are the concessionaires of the national transport network and the existing LNG terminal. In fact, no one (national or foreign) may hold, directly or indirectly, more than 25 per cent of the share capital of each company that is the concessionaire of said infrastructures. These restrictions do not apply to the state, to companies controlled by the state or to the relations of domination within the corporate group that operates the transportation network operator or the LNG terminal operator.

Besides the above-mentioned restrictions, no other specific limitations on the transfer of shares apply solely to the natural gas sector. However, as most activities comprehended in the sector are performed under a concession contract, it is common for these contracts to submit the transmission of shares in the relevant companies, as well as the transfer of assets, to authorisation by the competent government

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member. Failure to request said authorisation renders the transaction null and void.

International

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

Decree-Law 138/2014 of 15 September 2014 sets out a special regime for the transfer of strategic assets in public utilities sectors. According to this regime, the transfer of such assets to foreign companies (outside the EU) can be rejected by the Portuguese government where the acquisition compromises national security and defence, as well as the country's security of supply.

33 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 European law.

The legislative package enacted in 2006, which deeply restructured the natural gas sector, derives directly from the Second Gas Directive 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 Directive 2009/73/EC, which obliged Portugal to introduce some adjustments in its legislation, namely concerning unbundling requirements, the powers of the national regulator and customers' rights.

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

There are no specific rules. It is, however, expected that, with the implementation of the Iberian natural gas market, requirements for connection between the grids and the management of capacity between Portugal and Spain would be established.

Transactions between affiliates

35 What restrictions exist on transactions between a natural gas utility and its affiliates?

Not applicable.

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

Not applicable.

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