

Electricity Regulation

In 27 jurisdictions worldwide

Contributing editors

Earle H O'Donnell and Daniel Hagan



2015

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Electricity Regulation 2015

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CONTENTS

Australia	5	Indonesia	97
Andrew Monotti, Simon Cooke and Tim Gargett King & Wood Mallesons		Arfidea Dwi Saraswati, Gregory K Ranslam, Rizky Aliansyah and Catherine J Manurung Arfidea Kadri Sahetapy-Engel Tisnadisastra (AKSET)	
Austria	12	Ireland	103
Bernd Rajal and Christian Schmelz Schönherr Rechtsanwälte GmbH		Alex McLean and Patrick McGovern Arthur Cox	
Brazil	19	Japan	111
Fabiano Ricardo Luz de Brito, Giovani Ribeiro Loss, Pablo Sorj and Bruno Werneck Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados		Nagahide Sato and Sadayuki Matsudaira Nishimura & Asahi	
Bulgaria	25	Mexico	117
Adriana Nacheva and Siyana Veleva Kinkin & Partners Law Firm		Rogelio López-Velarde and Amanda Valdez López Velarde, Heftye y Soria	
Canada	31	Nigeria	124
Paul Harricks, Neeta Sahadev and Kelby Carter Gowling Lafleur Henderson LLP		Babatunde Irukera and Ikem Isiekwena SimmonsCooper Partners	
Chile	37	Panama	133
José Manuel Larraín, José Miguel López and David Acuña Larraín Rencoret & Urzúa Abogados		Erika Villarreal Z, José A Brenes and Ixalondra Chee Chong Anzola Robles & Associates	
China	44	Philippines	140
Jay Ze Eversheds LLP Beijing Representative Office		Patricia A O Bunye Cruz Marcelo & Tenefrancia	
Croatia	52	Portugal	147
Ivana Manovelo and Miran Maćešić Maćešić & Partners		António Vicente Marques AVM Advogados	
Equatorial Guinea	57	Slovakia	152
Maite C Colón and Juanita Avomo Mikó Nkene Centurion LLP		Roman Prekop, Monika Šimorová and Peter Ikrényi Barger Prekop s.r.o.	
Finland	61	Switzerland	159
Katri Joenpolvi, Ville Hailikari and Mikko Pirttilä Krogerus Attorneys Ltd		Marc Bernheim, Gaudenz Geiger and Damian Hess Staiger, Schwald & Partner Ltd	
Germany	67	Turkey	165
Alexander Dlouhy and Daniel Breuer Osborne Clarke		Değer Boden Akalın and Şeyma Olğun Boden Law	
Ghana	74	United Kingdom	176
Kimathi Kuenyehia and Daniel Korang Kimathi & Partners, Corporate Attorneys		Kirsti Massie and Nicola Kim White & Case LLP	
Greece	84	United States	181
Euripides Ioannou and Dimitra Rachouti Potamitisvekris Law Firm		Earle H O'Donnell White & Case LLP	
India	90		
Neeraj Menon and Rashi Ahooja Trilegal			

Slovakia

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1 Policy and law

What is the government policy and legislative framework for the electricity sector?

The electricity market has been fully liberalised since 2007, and closely follows EU energy policy. On a national level, the basic strategic documents that set out the main long-term goals and objectives of Slovakia in the electricity sector are: the Energy Policy of Slovakia (the Energy Policy) and the Energy Security Strategy of Slovakia (the Energy Security Strategy), which are both prepared by the Ministry of Economy of Slovakia and approved by the government.

The Energy Policy has been in existence for eight years and is regularly updated. It sets out the long-term aims and priorities of development in the energy sector. The priorities include reducing dependence on energy supplies from unstable areas, diversifying energy sources and transport routes, using domestic energy sources for electricity production with regard to economic efficiency, increasing the use of combined heat and power and use of nuclear energy and ensuring the safety of nuclear power plants.

The current Energy Security Strategy outlines the objectives and means of ensuring energy security in Slovakia until 2030. It aims at ensuring self-sufficiency in electricity production, establishing optimal pricing of electricity, strengthening the position of Slovakia as a pro-export country and a transit country in the electricity market and continuing a reliable supply of energy.

The legislative framework of the electricity sector contains four basic legal regulations (acts of the Slovak parliament):

- Act No. 251/2012 on Energy (the Energy Act) sets out, inter alia, the conditions for conducting business in the energy sector, rights and obligations of the market participants as well as third persons and state administration and state supervision in the energy sector. The Energy Act forms the basis for the proper functioning of the internal electricity market;
- Act No. 309/2009 on Promotion of Renewable Energy and High-efficiency Co-generation (the Act on Promotion of Renewable Energy) provides for the set of renewable energy sources and basic features of the support of these sources, as well as means of promotion;
- the use and the state supervision of nuclear energy (administered by the nuclear office) are subject to Act No. 541/2004 on Peaceful Use of Nuclear Energy; and
- Act No. 250/2012 on Regulation in Network Industries (the Regulation Act) sets out the principles of regulation in network industries and conditions under which regulated activities may be performed, as well as the position and discretion of the Regulatory Office of Network Industries (RONI).

The Slovak government, the RONI, the nuclear office, as well as other state bodies, issue secondary legislation that regulates in detail particular aspects of the electricity market functioning. For example, the RONI issued Decree No. 24/2013 establishing rules for the functioning of the internal electricity market and gas market (market rules) that sets out specifics of market functioning, including access, connection, transmission, distribution, supply, trade and organisation of the short-term market with electricity, as well as cross-border interconnections.

Electricity market operation and interaction of market participants are further regulated in the operational and technical rules of the transmission system operator (TSO), distribution system operators (DSOs) and

the organiser of the short-term electricity market (OKTE). These operational and technical rules are binding for other market participants and are subject to prior approval by the RONI.

2 Organisation of the market

What is the organisational structure for the generation, transmission, distribution and sale of power?

Electricity market participants include electricity producers, the TSO, DSOs, suppliers of electricity, customers, traders in electricity and OKTE. The rights and obligations of market participants are set out in the Energy Act. Electricity generation, transmission, distribution and supply, as well as the activities of OKTE are subject to authorisation by the RONI.

A single producer – Slovak Electric a.s. (SE) operates a diversified portfolio of generation sources that include nuclear, hydroelectric and thermal power plants. The majority shareholder is the Italian company Enel Produzione SpA, which owns 66 per cent with Slovakia as the minority shareholder owning 34 per cent. Other electricity producers use its installations predominantly for their own consumption or for the sale of electricity to the distribution system operator to cover losses in the system, and to the transmission system operator to cover ancillary services. In 2013, SE contributed almost 80 per cent to the domestic production of electricity.

Slovenská elektrizačná prenosová sústava, a.s. (SEPS) ensures the transmission of electricity in Slovakia. It owns and operates the entire electricity transmission grid (400kV, 220kV and a portion of 110kV lines, which serve for electricity transmission purposes) and provides for, inter alia, the dispatching of the system, the balancing of the system (production versus consumption) in the time span of one year, and system and ancillary services, maintenance, reconstruction and development. These activities aim to guarantee electricity supply to all users of the transmission system, as well as the transit of electricity and parallel operation with neighbouring transmission systems. SEPS develops operating rules and technical rules that are binding for all market participants. SEPS is fully owned by the state.

Distribution of electricity is carried out by three regional (lines of 110kV or less) and over 100 local (lines of 22kV) DSOs. The regional DSOs are Západoslovenská distribučná, a.s., Stredoslovenská energetika – Distribúcia, a.s. and Východoslovenská distribučná, a.s. They provide distribution services in the defined territories of Slovakia – Western Slovakia, Central Slovakia and Eastern Slovakia, respectively, as natural monopolies. They are partially owned by the state (51 per cent). Minority stakes are held and management control is exercised by foreign shareholders (such as EPH, E.ON and RWE groups). Local DSOs usually own and operate distribution systems within industrial sites, where it is preferable to connect directly to the nearest transmission system. DSOs develop operating rules.

Electricity supply to households and non-household customers is carried out by end suppliers. The three largest end suppliers, namely ZSE Energia a.s. (ZSE), Stredoslovenská energetika a.s. (SSE) and Východoslovenská energetika a.s. (VSE) accounted for the supply of more than 46 per cent of consumption in Slovakia in 2013. The three regional companies also act as suppliers of last resort in the defined territories of Slovakia.

Trading of electricity can be split into wholesale and retail trade. Retail includes electricity supply to households and small and medium-sized enterprises (SME), where the price of electricity is regulated by the RONI. The most important players in both the wholesale and the retail areas are

SE (through subsidiary SE Predaj, s.r.o.) and subsidiaries of ZSE, SSE and VSE. The wholesale trade in electricity takes the form of bilateral contracts, auctions, energy exchange transactions and market balancing. The price of wholesale electricity is not regulated and is determined by the market.

The tasks of a short-term electricity market organiser and the deviation clearing in the territories of Slovakia are performed by the OKTE, a joint-stock company wholly owned by SEPS.

The OKTE, as an entity providing for deviation clearing, clears differences between the contracted levels of supply or consumption of electricity and actual supplied or withdrawn levels at a specified time. OKTE operates a centre for data archiving and is responsible for the central billing of charges related to the operation of the power system.

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

The construction of generation facilities requires several authorisations that are issued as a result of several permitting proceedings, including, inter alia:

- compliance assessment of the generation facility to be constructed with the Energy Policy and Energy Security Strategy;
- environmental impact assessment;
- planning and construction proceedings;
- occupancy proceedings resulting in issuance of occupancy permits authorising the use and operation of the generation facility; and
- the authorisation to produce electricity.

Whether the construction of a generation facility is within the Energy Policy and Energy Security Strategy must be assessed by the Ministry of Economy. The Ministry of Economy assesses the investment plans of the planned facilities. The plans must be supported by opinions issued by the TSO and DSOs as to which systems the new facility would be connected to. If the Ministry of Economy considers the planned facility to be consistent with Energy Policy and Energy Security Strategy, the Ministry of Economy shall issue a certificate to that effect. The certificate is not required in certain de minimis cases (generation of solar energy facilities connected to roofs of buildings with installed capacity of up to 100kW and energy sources (other than solar) with installed capacity of up to 1MW). The construction of electricity generation facilities is often subject to assessment in terms of their environmental impact as well. The procedure is rather complex and is regulated by Act No. 24/2006 on environmental impact assessment (EIA). The assessment results in a final statement issued by the Ministry of Environment. The construction itself is subject to an authorisation process under the building code, usually in planning, construction and use proceedings that result in the issuance of planning, building and use permits. Depending on the type and primary source of energy (water, heat, cogeneration, geothermal, solar, etc), the specific approvals and permits differ and are issued by different competent authorities in separate administrative proceedings. After construction is completed, it is necessary to obtain operating permits through which the competent authorities allow building occupancy and operation of the generation facility itself for the production of electricity. The production and supply of electricity are subject to separate permits (licences to produce and supply electricity). These permits are issued by the RONI. The RONI permit is not required in certain de minimis cases (generation facilities of up to 1MW), where it is sufficient to notify the RONI on the commencement of production of electricity.

4 Interconnection policies

What are the policies with respect to interconnection of generation to the transmission grid?

The policies regulating the connection of generation facilities to the transmission system are specified in the Energy Act, the Market Rules, the SEPS Operation Rules and the SEPS Technical Rules. Any electricity producer has the right to connect its generation facility to the system by virtue of a connection to the system contract and after completion of technical and commercial terms for access and connection to the transmission system. SEPS is obliged to connect each applicant meeting the above terms. However, SEPS may refuse connection to the system in cases where connection may compromise safety, reliability and the stability of system operation, or if the system lacks capacity.

SEPS assesses, as a first step, the possibility to connect. Such an assessment takes place based on an application filed by the potential producer at the early stages of the permitting procedures. SEPS evaluates the request, assesses technical options for the connection and sets out:

- binding technical requirements for connection;
- the technical parameters, data and documents that must be submitted along with the application for connection; and
- the date of connection and term for filing of the application for connection. The applicant must comply with the above terms and conditions and reflect them in the constructed facility.

Subsequently, after the facility is constructed, the applicant files an application for connection. Such an application must be supported by project documentation of the facility and construction permits and must address a number of other matters. The TSO determines binding conditions under which the facility can be connected, including a timetable. The parties enter into an agreement on the connection to the transmission system. Physical connection is made after payment of the connection fee. The fees of connection and access to the transmission system are regulated by the RONI.

5 Alternative energy sources

Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

Slovakia encourages power generation from renewable sources and high-efficiency cogeneration. The main legislative framework is set out in the Act on Promotion of Renewable Energy. The Act covers the production of electricity from hydropower, solar, wind, geothermal, biomass, biogas, landfill gas, sewage treatment plants, bio-methane and aerothermal and hydrothermal energy. High-efficiency cogeneration covers simultaneous production of electricity and heat, or mechanical energy and heat, or mechanical energy, heat and electricity, using specific technologies named in the legislation.

The respective means of support include:

- priority right to connect, access, transmit, distribute and supply guaranteed to each producer for an unlimited time period;
- guaranteed offtake of electricity by the regional DSO to cover losses in the distribution system for 15 years and in facilities with a total installed capacity up to 500kW for the entire lifetime of the facility; and
- obligatory takeover of liability for deviation by regional DSOs for 15 years for producers with a total installed capacity up to 1MW (for solar energy facilities up to 30kW) and in facilities with a total installed capacity up to 500kW, for the entire lifetime of the facility.

The Act also introduced a feed-in scheme of support. The feed-in scheme operates as a state-provided surcharge to the base price of electricity produced from renewable energy sources or high efficiency cogeneration. This surcharge equals the difference between the base price and the price of electricity to cover losses in the distribution system. The base price is set out by the RONI, with particular regard to the type of renewable energy technology used, installed capacity and the date the facility was put into operation. The manufacturer has a right to receive the surcharge for 15 years from the date the facility was put into operation. The base price set out by the RONI is valid throughout the whole period.

6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

Slovakia is obliged, based on the Directive 2009/28/EC of 23 April 2009 on the Promotion of the use of Energy from Renewable Sources, to increase the use of renewable energy sources relative to gross energy consumption from 6.7 per cent in 2005 to 14 per cent in 2020.

Government policy is based on the minimisation of costs for an integrated approach using renewable sources and reducing greenhouse gas emissions. The existing system of support aims at promoting renewable energy and low carbon technologies to reduce fossil fuel consumption and hence greenhouse gas emissions, as well supporting energy effectiveness (see question 5).

The setting up for establishment of the support scheme (particularly solar) caused an increase of production capacity that exceeded expectations. The increase has created upward pressure on electricity prices and has caused a negative impact on the stability and security of the system. As of 2012, RONI and the government are therefore continuously revising the support scheme and minimising support of electricity generation from almost all renewable sources. The introduced measures include the setting of prices of electricity from renewable energy sources so that the impact on the price of electricity is minimised, organising reverse auctions in construction of new production capacities (primarily with respect to solar and wind energy) and reviewing system support in the purchase of electricity to cover losses. The implementation of these measures has influenced the types of resources used to meet the electricity demand. In particular, several solar and wind energy projects are on hold owing to low rentability and de facto impossibility of obtaining necessary permits.

7 Government policy

Does government policy encourage or discourage development of new nuclear power plants? How?

In Slovakia, there is no formalised system supporting the development of new nuclear power plants. However, the government's declared priorities include the use of nuclear energy as a diversified, economically efficient and environmentally acceptable option for electricity production and, at the same time, to ensure nuclear safety in all operating nuclear installations.

SE is currently carrying out work on the completion of its Mochovce power plant Unit 3 and Unit 4; reportedly the largest private investment in the history of Slovakia. Completion of both UNITS is currently delayed, reportedly owing to budgetary issues.

Construction of another reactor unit in Jaslovské Bohunice is being considered by Jadrová energetická spoločnosť Slovenska a.s. (JESS), partially owned by the state (51 per cent) and by the Czech energy group CEZ. The government does not plan to finance this construction from budgetary resources and shall support it only if it is financed by private investment without state participation. The energy company JSC Rusatom Overseas (subsidiary of the Russian ROSATOM) is reportedly negotiating replacement of CEZ in JESS.

Regulation of electricity utilities – transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

Regarding the requirements related to the construction of transmission networks, see question 3. These requirements apply not only to the construction of the electricity generation facility, but also to the construction of a transmission network.

The performance of electricity transmission activities is subject to licensing by the RONI (licence to transmit electricity). A transmission system operator must own the network, be independent and legally and functionally unbundled from both electricity and gas generation or production and supply activities. These conditions are subject to a specific certification by RONI and designation by the Ministry of Economy. Currently, the only entity performing electricity transmission and transmission system operation in Slovakia is SEPS.

9 Eligibility to obtain transmission services

Who is eligible to obtain transmission services and what requirements must be met to obtain access?

SEPS is obliged to allow access to the system to each market participant who is licensed to trade, produce or distribute electricity and who meets the technical and commercial conditions laid down for access to the transmission grid. Further details are provided in the Energy Act, Market Rules, the SEPS Operational Rules and the SEPS Technical Rules. The requirements vary depending on the market participant concerned.

An electricity trader wishing to trade on the Slovak electricity market that does not supply electricity to end customers needs to conclude a contract on the clearing of deviation with a deviation clearing entity, as well as a contract to supply electricity to the market participant with whom the trade takes place, and to lodge a financial guarantee to the OKTE. There is

no need to conclude a contract on the access and transmission of electricity with SEPS as it is not physically connected to the system. Conditions for the conclusion of the contract on clearing of deviation and composition of the financial guarantee are provided in the OKTE Operational Rules.

In short, the supplier delivering to end-users needs to conclude three contracts: a contract on clearing of deviation with a deviation clearing entity or other market participant who concludes such contracts, a contract to supply electricity to customers and a contract on access and transmission of electricity with SEPS (if physically connected).

In the case of supply from abroad, a contract on the transmission of electricity through interconnectors must be concluded with SEPS. If the customer is connected to the system via a distribution system, further conditions must be met, specified in detail in the DSO's Operational Rules.

A producer that wants to connect a new production facility to the transmission system must meet the conditions described in question 4. After the facility is connected, the producer concludes a contract on the access to the system and the transmission of electricity with SEPS. Eligible customers, for example a production site, must conclude a connection contract to connect to the system, a contract on clearing of deviation with a deviation clearing entity or another market participant who concludes such contracts, a contract on access and transmission of electricity with SEPS and an electricity supply contract concluded with the electricity supplier with which it agreed to offtake electricity.

10 Government incentives

Are there any government incentives to encourage expansion of the transmission grid?

The state supports the expansion of the transmission grid through price regulation. SEPS is responsible for the operation and development of the transmission grid. A substantial portion of SEPS's revenue comes from regulated activities. SEPS provides funding for the development of the transmission grid mainly from its own resources and partially through financing from the European Bank for Reconstruction and Development. In accordance with SEPS programme of development for 2012–2021, SEPS plans to invest primarily in the replacement and modernisation of voltage lines (220kV and 440kV). Regarding cross-border expansion of the transmission system, SEPS plans to increase transmission capacity on the cross-border profiles with the Czech Republic, Poland, Hungary, Ukraine and Austria. These projects are in various stages of preparation and their execution depends mainly on available funding. Some of these projects (namely cross-border profiles with Hungary and Austria) are classified as projects of European interest and priority projects under Decision No. 1364/2006/EC of 6 September 2006, laying down guidelines for trans-European energy networks.

11 Rates and terms for transmission services

Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

The scope and methods of price regulation are primarily set out in the Energy Act and Regulation Act. The regulation itself is carried out by the RONI. In the field of transmission services, the price regulation applies to the connection and access to the transmission grid, electricity transmission, ancillary and system services and system operation. The RONI declares methods, conditions and procedures for the regulation of goods and services in the electricity sector. Decree of the RONI No. 221/2013, establishing price regulation in the electricity sector, sets out the formulas and methods for calculating prices and also specifies all the parameters for the calculation of regulating prices. A regulated entity must present the RONI with a price proposal in accordance with the RONI Decree. The RONI determines the final price of the regulated service for the whole regulatory period in a binding price decision. The RONI is empowered to adjust the final price of the regulated service if there are unforeseen market changes.

12 Entities responsible for assuring reliability

Which entities are responsible for assuring reliability of the transmission grid and what are their powers and responsibilities?

The entity responsible for assuring reliability of the transmission grid is SEPS. SEPS provides for the purchase of ancillary services needed to ensure the provision of system services for maintaining the quality of supply and

electricity transmission, allocates transmission capacity, establishes the rules for balancing the system and takes further measures within the scope of its powers designated by legislation. SEPS has the right to suspend or limit the transmission of electricity to the extent necessary and essential in, among other things, a state of emergency or if life, property or the health of people are jeopardised. SEPS has the right to require information from the market participants needed to operate the system. The duties of SEPS include, inter alia, the obligation to ensure the quality of electricity supply and related services (pursuant to RONI Decree No. 275/2012 outlining quality standards for transmission, distribution and supply of electricity), obligation to cooperate with the OKTE and systematically maintain and refurbish the transmission grid. Supervision over the adherence by SEPS to its obligations concerning reliability and safe operation of the transmission system is carried out by the Slovak commercial inspection (SCI). SCI took over the responsibilities of the state energy inspection in 2014.

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

As regards the requirements related to the construction of distribution networks, see question 3 as the requirements are similar. Additionally, the Ministry of Economy will approve consistency with Energy Policy and Energy Security Strategy only for an area in which there is no planned or constructed distribution network, or where the distribution capacity is fully used.

The performance of electricity distribution activities is subject to licensing by the RONI (the licence to distribute electricity in a designated territory). In January 2014, there were 160 distribution licence holders.

14 Access to the distribution grid

Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

The DSO shall, upon request, enable access to the grid to every market participant fulfilling the technical and commercial conditions of access. Rules for access described under question 9 apply similarly on access to the distribution grid. Currently, connection to the grid is regulated. The RONI performs a regulatory function by specifying the method of calculating the maximum price for connection to the grid.

15 Rates and terms for distribution services

Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

The rates and terms for the provision of transmission services and legal standards applied by the RONI, described under question 11, apply similarly to the rates, terms and legal standards for distribution services.

Regulation is performed by specifying the method of calculating the maximum price and tariffs for access to the distribution grid, distribution of electricity and provision of ancillary and system services. Tariff prices for distribution of electricity also include prices for access to the transmission grid, transmission of electricity and transmission losses.

Regulation of electricity utilities – sales of power

16 Approval to sell power

What authorisations are required for the sale of power to customers and which authorities grant such approvals?

Supply of electricity (the sale of power to customers) is subject to authorisation by the RONI. The supply of electricity can be authorised either by issuing a licence to supply electricity or a certificate acknowledging notification. Both are issued by the RONI. Notification is sufficient for the production and supply of electricity in production facilities with a total installed capacity of up to 1MW. In such cases, the supplier notifies the RONI within 30 days of the commencement of supply. The details and form of notification are provided for and by the RONI. If the notification meets the legal requirements, the RONI acknowledges the notification by issuing a certificate to that effect. If the conditions for notification are not met, a licence to supply electricity is required. The RONI will authorise the supply, provided

the applicant complies with applicable legal requirements, including, inter alia, proof of the supplier's professional competence, technical preconditions for the supply and designation of a responsible representative for the supplier. The RONI, in the licence, specifies in particular:

- obligations and technical conditions under which the supply of electricity can be undertaken;
- the duration of the permit including the date of commencement of operations; and
- the subject, location, scope of business and defined territory or part of a defined territory, for which the permit applies.

The licence is issued for an indefinite period, unless requested otherwise.

Supply of electricity by a supplier from an EU member state is also subject to authorisation by the RONI. The RONI will authorise the supply, provided the entity has a valid EU member state supply authorisation.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

Generally, electricity prices are composed of a non-regulated power component and regulated fee component covering system services, transmission and distribution costs, etc. However, some electricity prices are fully regulated. The RONI regulates prices of electricity for households, SMEs and the price of electricity supply of last resort. These prices are further divided into different groups based on the power utilisation and voltage level of customers. The scope and methods of price regulation are primarily set out in the Energy Act and the Regulation Act. The regulation itself is implemented and performed by the RONI. The relevant legislation includes the Decree of the RONI No. 221/2013, establishing price regulation in the electricity sector. The rules include formulas and methods for calculating prices, and also specify parameters for the calculation of regulated prices. Regulation is performed by specifying the method for calculating the maximum price for supply of electricity to customers.

18 Rates for wholesale of power

Who determines the rates for sales of wholesale power and what standard does that entity apply?

The rates for wholesale trade in electricity are not regulated and are fully subject to market mechanisms. Electricity trading takes the form of commodity trading through energy exchanges and through bilateral contracts or auctions. Most of the generated commodity is traded directly or indirectly through bilateral agreements between SEPS and VSE, SSE and ZSE. The rest is traded mostly on the Czech Exchange PXE and the German Exchange EEX. The OKTE has organised the short-term electricity market since the beginning of 2011.

19 Public service obligations

To what extent are electricity utilities that sell power subject to public service obligations?

Market participants are subject to a number of public service obligations. All obligations imposed in the public interest must be clear, enforceable, auditable, transparent and must ensure equal access for electricity companies to end customers in their specified territory. Public service obligations include, in particular:

- universal service;
- obligation to provide access and connection to the system;
- supply of electricity by the supplier of last resort;
- electricity supply at reasonable, easily and clearly comparable, transparent and non-discriminatory prices;
- quality and price of electricity (household and small businesses);
- the obligation to increase energy efficiency;
- simple change of supplier;
- environmental protection; and
- the introduction of metering systems.

The Energy Act includes new provisions regarding smart metering systems. The government recently decided on the introduction of smart metering systems no later than by 2020.

Within the universal service, the supplier of electricity for households must provide electricity in which the supply includes the distribution of electricity and takeover of liability for deviation. Customers are entitled to connect to the system and have the right of access, transmission,

distribution and supply of electricity. The Energy Act also regulates a state of emergency (a sudden shortage or threatened shortage of electricity, or interruption of its supply). If the state of emergency is declared by SEPS, market participants are required to participate in the removal of the cause and consequences of emergency and restoration of the electricity supply. Until the state of emergency is revoked, the right to claim damages for lost profits or for the implementation of restrictive measures is excluded. Suppliers of last resort are obliged to supply electricity to eligible customers, whose former suppliers terminated their activities, upon notification by the DSO for a maximum of three months. The RONI regulates prices of such supply.

Regulatory authorities

20 Policy setting

Which authorities determine regulatory policy with respect to the electricity sector?

The rules for the functioning of the electricity sector are set out in EU legislation and are implemented into the Slovak legal system. The primary legislation regulating the electricity sector is the Energy Act and the Regulation Act. Secondary legislation, in the form of regulations, decrees and decisions, provides further detail. The secondary legislation is adopted by the government, the Ministry of Economy and the RONI. One of the most important pieces of secondary legislation is the Market Rules adopted by the RONI in the form of a decree. The Regulatory Council and the Ministry of Economy prepare strategic documents setting out long-term objectives and priorities for the energy sector, including the Energy Policy, the Energy Security Strategy and the Regulatory Policy for the Upcoming Period 2012–2016 (Regulatory Policy). The Regulatory Policy designates principles, aims, objectives and means of regulation in network industries and is prepared for a term of four years; current Regulatory Policy covers the regulatory term of 2012–2016. This document substantially governs the functioning of the electricity sector. The Regulatory Council has the right to amend the Regulatory Policy, and it typically uses this right once a year.

The RONI is the most important regulatory authority for the electricity sector. As such, it largely influences the daily functioning of the electricity sector. SCI is the controlling and supervisory body that performs state supervision over the electricity sector. SEPS, DSOs and the OKTE have partial regulatory power that is performed by issuing their operational and technical rules. All such rules are subject to approval by the RONI.

21 Scope of authority

What is the scope of each regulator's authority?

The Ministry of Economy is responsible for developing energy policy. It monitors compliance with the security of electricity supply obligations and, if necessary, takes appropriate action. It also decides on public service obligations and on their subsequent application. It authorises construction of electricity facilities by issuing certificates of compliance with the Energy Policy and Energy Security Strategy. In exercising its competence, it works closely with other public bodies, for example, in preparation of the Regulatory Policy with the Regulatory Council and also during its legislative activities. The Ministry of Economy also designates independent transmission system operators.

The Regulatory Council develops draft regulatory policy and approves the scope of price regulation and the manner of its implementation. At the same time, the Regulatory Council functions as the appellate authority with respect to certain decisions of the RONI.

The RONI is the regulatory authority responsible for ensuring transparent and non-discriminatory functioning of the energy market, including conditions for connection and access to the transmission and distribution systems, transmission, distribution and supply of electricity, price regulation and ancillary services and services for system balancing; and oversees the independence of the designated transmission system operator. It issues, amends and withdraws authorisations to carry out regulated activities and regulates their quality requirements. It decides on prices for regulated goods and services. In cases where the generally binding regulations are not complied with, it imposes sanctions.

SCI performs state supervision over the electricity sector. Its inspectors are entitled to enter land, premises and facilities of the controlled entities in order to carry out the necessary investigations, to be provided with information, documents and explanations. In cases where the

generally binding regulations are not complied with, SCI, within its discretion, imposes sanctions.

22 Establishment of regulators

How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The Ministry of Economy is the central government authority. It is led by the minister, who is also a member of the government.

The RONI is an independent public authority established by law. It has broad powers. It is headed by a chairman, appointed and dismissed by the president of Slovakia, based on the proposal of the government. The Regulatory Council is a body of the RONI. It is led by the chairman of the RONI and has another six members, appointed and dismissed by the president of Slovakia, based on a proposal from the government and the parliament. A member of the Regulatory Council must fulfil the statutory conditions. The Regulation Act excludes any property or personal interconnections between its members and regulated entities or other state authorities. Apart from the chairmanship of the RONI, a position in the Regulatory Council is incompatible with any position in the RONI.

The fact, that the chairman of the RONI is present in the decision making process of both the RONI and the Regulatory Council has raised various concerns among market participants concerning their independence.

SCI is a state government body established by law, whose organisation falls under the authority of the Ministry of Economy. It is divided into regional inspection offices and is headed by a general director who is appointed and dismissed by the head of the Office of the Ministry of Economy.

23 Challenge and appeal of decisions

To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

In general, first instance decisions are issued by a designated department of the RONI. Appeals against such decisions can be made within 15 days to the Regulatory Council. This does not apply to decisions on fines, where the appellate authority is the chairman of the RONI. In proceedings concerning prices for regulated services, first instance decision appeals can be made in a 40-day period. Decisions on price regulation are immediately enforceable. In other cases, an appeal suspends the effects of the appealed decision.

The procedure is subject to the requirements laid down by the Regulation Act and the Administrative Proceedings Code (Act No. 71/1967 on Administrative Procedure). Appeals can be directed against procedural defects and substantive flaws of the decision.

If the appeal has been dismissed, the decision as well as the procedure that preceded issuance can be subject to a judicial review of legality. Such a review is conducted pursuant to Civil Procedure Code (Act No. 99/1963 on Civil Court Procedure).

Acquisition and merger control – competition

24 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

Except for cases in which the transaction meets the criteria stipulated by EU laws (Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentration between undertakings) and thus falls within the jurisdiction of the commission, the Anti-Monopoly Office of Slovakia has the power to assess the economic merging of undertakings (merger or acquisition of control) in Slovakia. Transactions are subject to the Anti-Monopoly Office's assessment when meeting the limits stipulated by Act No. 136/2001 on Protection of Competition. The Anti-Monopoly Office assesses, in a proceeding, whether the proposed transaction creates or strengthens a dominant position of the undertaking, resulting in significant barriers to effective competition in the relevant market. The Anti-Monopoly Office makes its decisions as a first-instance authority. The appellate authority is the Council. The Council has six members who are appointed by the government for a five-year term and who must not

be employees of the Anti-Monopoly Office. The Council makes decisions on appeals against decisions of the Anti-Monopoly Office. The Council decisions, as well as decisions of the Anti-Monopoly office, are subject to judicial review of legality.

25 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

In general, transactions are subject to the Anti-Monopoly Office's assessment, if in the last accounting period:

- the combined Slovak turnover of the concerned undertakings amounted to at least €46 million and each of at least two of the concerned undertakings achieved a turnover of at least €14 million in Slovakia; or
- the worldwide turnover of at least one of the undertakings concerned amounted to at least €46 million; and
 - in case of a merger or amalgamation of two or more separate undertakings the turnover of at least one other concerned undertaking amounted to at least €14 million in Slovakia;
 - in case of the acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking or part of another undertaking or undertakings, the turnover of the target amounted to at least €14 million in Slovakia; or
 - in case of the creation of a joint venture controlled by two or more independent undertakings, performing on a lasting basis all the functions of an autonomous economic entity (full-function joint venture), the turnover of at least one joint venture partner amounted to at least €14 million in Slovakia.

The Anti-Monopoly Office issues a decision within 25 working days following the date of delivery of a complete notification of a transaction. The chairman of the Anti-Monopoly Office can reasonably extend the period in complex cases, by a maximum of 90 working days. Merging parties may not exercise the rights and obligations arising from the transaction closing until the final decisions have entered into force. On the other hand, notification of a transaction may also be made before the conclusion of the contract or before there is another relevant legal fact establishing a merger or acquisition of control. It is therefore possible, through careful structuring of the transaction, to optimally plan obtaining consent, in order to avoid unnecessary complications and delays.

26 Prevention and prosecution of anti-competitive practices

Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

In general, the Anti-Monopoly Office and the European Commission have the power to pursue and prosecute anti-competitive conduct in Slovakia. In network industries (including energy), these rights are also entrusted to the RONI.

27 Determination of anti-competitive conduct

What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

Regarding substantive standards for assessing whether conduct is anti-competitive or manipulative, Slovakia applies standards established by EU legislation, in particular articles 101 and 102 Treaty on the Functioning of the European Union (TFEU).

The Act on protection of competition defines the substantive standards in the light of articles 101 and 102 TFEU. Specifically, agreements and concerted practices between undertakings, as well as decisions of their associations, whose objective or effect is, or may be, the restriction of competition are prohibited. The law provides exceptions for which such generally worded prohibition does not apply, copying the standard exceptions stipulated in article 101 TFEU.

It is prohibited to abuse a dominant position in the market. An entrepreneur or several entrepreneurs have dominant positions in cases when they are not exposed to substantial competition and when given their economic power can act independently. The abuse of a dominant position covers practice of restricting access to a so-called 'essential facility'. Essential

facility is equipment, infrastructure, right or place, where the construction or acquisition by other undertakings is not objectively possible and without access to which there would, or might be, a distortion of competition in the concerned market.

For the energy sector, specific regulations regulating the energy sector apply.

28 Preclusion and remedy of anti-competitive practices

What authority does the regulator (or regulators) have to preclude or remedy anti-competitive or manipulative practices?

The Anti-Monopoly Office has the power to decide whether certain conduct or activity of an entrepreneur is prohibited, impose an obligation to refrain from such conduct and impose an obligation to remedy the unlawful state of affairs.

In this context, it has the right to request information and the documents necessary for the participant's activities, including financial, commercial and legal documents, and require oral or written explanations from concerned persons. It also has the right to engage in a general investigation of the market, as well as the right to initiate individual proceedings against a particular entrepreneur, both on its own initiative, as well as on the motion of a third party.

The Anti-Monopoly Office has the right to enter an entrepreneur's buildings, premises or vehicles related to his or her activities or conduct. Other buildings, notably private premises, can be entered only with the consent of the court. In all cases, the Anti-Monopoly Office has the right to require assistance and help from the Slovak police.

If it finds a violation of competition law, it has the power to impose fines that vary depending on the turnover of the undertaking, and can be up to 10 per cent of the undertaking's turnover.

There is a formalised option to terminate proceedings concerning agreements restricting competition and abuse of a dominant position with commitments. In this case, the entrepreneur proposes measures to be taken to eliminate possible distortion of competition and, if these measures are accepted as adequate for the removal of the market discrepancy, the Anti-Monopoly Office imposes the obligation to implement the measures. In such cases, the Anti-Monopoly Office does not declare a violation of law and refrains from imposing a fine. In 2012, the Anti-Monopoly Office issued its Guidelines on Commitments Procedure. A recent amendment to the Act on Protection of Competition introduced a specific settlement procedure. The settlement procedure enables the Anti-Monopoly Office and the entrepreneur to agree on a settlement of a case and decrease of a corresponding fine. As opposed to the commitments procedure, the Anti-Monopoly Office declares a violation of law and imposes a fine, even though decreased. The Anti-Monopoly Office issued a decree specifying the details of the procedure.

The RONI also monitors the activities of market participants, within a similar scope of designated powers. The RONI imposes penalties for anti-competitive conduct, such as a refusal to connect, to provide access or other violation of market rules. The RONI also monitors the independence of system operators, according to the standards of legal and functional unbundling set in the Electricity Directive.

International

29 Acquisitions by foreign companies

Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

Generally speaking, there are no restrictions that would limit the possibility of foreign entities acquiring equity stakes in companies operating in the energy sector.

However, since the transposition of the Electricity Directive, new unbundling restrictions apply. A TSO has to be certified by the RONI and formally designated by the Ministry of Economy. The process of certification is different in cases when an entity from a third country (non-EU member state) acquires control over the transmission system operator. In the certification process, the RONI assesses, among other things, whether the change control does not endanger security of electricity supply in Slovakia and EU.

Update and trends

First, national regulatory authorities approved the design and implementation of the extension of the CZ-SK-HU market coupling towards Romania and since then the aim was for the project to go live as soon as possible. In April 2014, the project announced the go-live date as 11 November 2014. The extended market coupling should introduce the benefits of market integration to all market participants.

Second, work on the new energy policy continues. Its final wording will have a major impact on the functioning and future development of the electricity market. Market participants are especially eager to know what direction Slovakia will take with respect to the production of electricity from renewable sources.

Lastly, it is widely reported, that Enel Produzione SpA is contemplating the sale of shares in the biggest electricity producer in Slovakia – SE. Several energy giants (ROSATOM, CEZ) were mentioned in the press as potential buyers. It seems that the final outcome of the reported transaction will depend on the bidders' capability to guarantee finalisation of the construction of two blocks in the Mochovce nuclear power plant. The government has also expressed an interest in strengthening the state's stake in SE.

30 Cross-border electricity supply

What rules apply to cross-border electricity supply, especially interconnection issues?

Terms of cross-border electricity exchanges are governed by Regulation (EC) No. 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity. Further details are contained in the Market Rules, SEPS Operational Rules and SEPS Technical Rules. SEPS provides for cross-border electricity exchange through respective cross-border profiles on the basis of contracts for the transmission of electricity through interconnectors. The basic condition for import and export of electricity is the availability of free transmission capacity on the border profiles. SEPS publishes and adjusts on its website (www.sepsas.sk) the transmission capacity and its availability to market participants for import and export purposes.

Depending on the profile, the available capacity is allocated to market participants as:

- long-term capacity for a period longer than one day, usually year and month;
- day capacity for a period of one day; or
- intraday capacity of a period less than one day.

The allocation of available capacity is processed through:

- explicit auctions;
- implicit auctions;
- first come, first served mechanism; or
- free nominations without setting the price.

Since 2012, market participants have praised the successful CZ-SK-HU market coupling (day-ahead spot markets interconnected based on the price market coupling principle).

Transactions between affiliates

31 Restrictions

What restrictions exist on transactions between electricity utilities and their affiliates?

In general, transactions between companies belonging to the same group may, under certain circumstances, be subject to restrictions, particularly in cases concerning disposal of assets. Restrictions are established by Act No. 513/1991 Commercial Code (the Commercial Code). As a general rule, such transactions must meet certain formal requirements (for example, the value of the subject matter of the transaction must be determined by an official appraiser, the contract must be deposited in an official registry (Collection of Deeds) or the transaction may require additional approvals by the company bodies).

Unbundling rules under the Electricity Directive have introduced specific limitations to ensure the independence of network operators belonging to the same group of vertically integrated undertakings (VIU).

According to the Regulation Act, a company from VIU wishing to enter into contract of a value over €100,000 with another company from the same VIU, has to seek and obtain a prior RONI's approval.

32 Enforcement and sanctions

Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

In Slovakia, this area of law is not regulated by public law, therefore all sanctions and remedies fall within the scope of private law and require private enforcement. The penalty for failure to comply with the restrictions is the invalidity of the transaction. In other words, if the conditions laid down in the Commercial Code are not adhered to, the transaction is invalid as being contrary to the law. Simultaneously, members of statutory bodies of the company have an obligation to compensate for the damage incurred to the company by not having complied with the restrictions on transactions between companies belonging to the same group.

The RONI can impose a penalty of up to 10 per cent of VIU's turnover for a breach of the unbundling rules. Without prior approval of the RONI, a contract of a value over €100,000 entered into by companies from the same VIU is invalid.

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