



Electricity Regulation

in 28 jurisdictions worldwide

Contributing editor: Earle H O'Donnell

2012



Published by
Getting The Deal Through
in association with:

- Allen & Overy LLP
- Andreas Lionis & Associates
- Anzola Robles & Associates
- Araújo e Policastro Advogados
- Arthur Cox
- Barger Prekop sro
- Berkemeyer Attorneys & Counselors
- Boden Law Office
- CVCLAW Villaraza Cruz Marcelo & Angangco
- Dundas & Wilson LLP
- Erdinast, Ben Nathan & Co Advocates
- Gilbert + Tobin
- Gowling Lafleur Henderson LLP
- Khaitan & Co
- Kocián Šolc Balaščík
- Larraín, Rencoret, Lackington & Urzúa Abogados
- Lener
- López Velarde, Heftye y Soria
- Maćešić & Partners
- Nestor Nestor Diculescu Kingston Petersen
- Osborne Clarke
- Schönherr Rechtsanwälte GmbH
- Siegler Law Office / Weil, Gotshal & Manges LLP
- SimmonsCooper Partners
- Staiger, Schwald & Partner Ltd
- Vietbid
- White & Case LLP
- Wierciński Kwiecieński Baehr Spk

10th anniversary
edition



Electricity Regulation 2012

Contributing editor:
Earle H O'Donnell
White & Case LLP

Business development managers
Allan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers
Ellie Notley
Sarah Walsh
Alice Hazard

Marketing assistants
William Bentley
Sarah Savage

**Marketing manager
– subscriptions**
Rachel Nurse
subscriptions@
gettingthedealthrough.com

Assistant editor
Adam Myers

Editorial assistant
Lydia Gerges

Senior production editor
Jonathan Cowie

Production editor
Martin Forrest

Chief subeditor
Jonathan Allen

Subeditors
Caroline Rawson
Sarah Morgan
Davet Hyland

Editor-in-chief
Callum Campbell

Publisher
Richard Davey

Electricity Regulation 2012
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 10Q, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd
2011

No photocopying: copyright
licences do not apply.
ISSN 1479-2310

The information provided in this
publication is general and may not
apply in a specific situation. Legal
advice should always be sought before
taking any legal action based on the
information provided. This information
is not intended to create, nor does
receipt of it constitute, a lawyer-client
relationship. The publishers and
authors accept no responsibility for
any acts or omissions contained
herein. Although the information
provided is accurate as of October
2011, be advised that this is a
developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law
Business
Research

Australia Catherine Dermody, Catherine Earles and Morelle Bull <i>Gilbert + Tobin</i>	3
Austria Christian Schmelz and Bernd Rajal <i>Schönherr Rechtsanwälte GmbH</i>	11
Brazil Maria Aparecida Seabra Fagundes, Rafaella Ferraz and Bernardo de Medeiros <i>Araújo e PolICASTRO Advogados</i>	19
Canada Paul Harricks and Neeta Sahadev <i>Gowling Lafleur Henderson LLP</i>	26
Chile José Manuel Larraín <i>Larraín Rencoret Lackington & Urzúa Abogados</i>	33
Croatia Mirosljub Maćešić, Ivana Manovelo and Miran Maćešić <i>Maćešić & Partners</i>	40
Czech Republic Václav Rovenský and Ján Béréš <i>Kocián Šolc Balaščík</i>	46
France Florence Ninane, Alexandre Ancel, Liliana Eskenazi and Charlotte Beauchataud <i>Allen & Overy LLP</i>	55
Germany Thomas Funke <i>Osborne Clarke</i>	61
Greece Basil C Scouteris <i>Andreas Lionis & Associates</i>	67
Hungary Eszter Zádori and Dániel Arányi <i>Siegler Law Office / Weil, Gotshal & Manges LLP</i>	74
India Amitabh Sharma, Mukund Puranik and Rahul Arora <i>Khaitan & Co</i>	81
Ireland Alex McLean, Patrick McGovern and Jennifer Burke <i>Arthur Cox</i>	92
Israel Uri Noy and Yehudit Libin <i>Erdinast, Ben Nathan & Co Advocates</i>	100
Mexico Rogelio López-Velarde and Amanda Valdez <i>López Velarde, Heftye y Soria</i>	107
Nigeria Babatunde Irukera and Ikem Isiekwena <i>SimmonsCooper Partners</i>	114
Panama Erika Villarreal and Nadia de Halman <i>Anzola Robles & Associates</i>	123
Paraguay Luis A Breuer and Magali Rodríguez-Alcala <i>Berkemeyer Attorneys & Counselors</i>	130
Philippines Patricia A O Bunye <i>CVCLAW Villaraza Cruz Marcelo & Angangco</i>	134
Poland Jerzy Baehr and Jakub Pokrzywniak <i>Wierciński, Kwieciński, Baehr Spk</i>	140
Romania Gabriela Cacerea and Bianca Pop <i>Nestor Nestor Diculescu Kingston Petersen</i>	146
Slovakia Roman Prekop, Monika Šimorová and Peter Ikrényi <i>Barger Prekop sro</i>	156
Spain Luis Castro Prieto, Aldara Martín Seara and Silvia San Felipe Menéndez <i>Lener</i>	164
Switzerland Marc Bernheim and Gaudenz Geiger <i>Staiger, Schwald & Partner Ltd</i>	170
Turkey Değer Boden Akalın and Seda Gümüş <i>Boden Law Office</i>	177
United Kingdom Peter Willis, David McGowan and Louise Macleod <i>Dundas & Wilson LLP</i>	187
United States Earle H O'Donnell and Caileen N Gamache <i>White & Case LLP</i>	198
Vietnam Nguyen Van Anh and Nguyen Thanh Ha <i>Vietbid</i>	209

Greece

Basil C Scouteris

Andreas Lionis & Associates

1 Policy and law

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

Greece's membership of the European Union effectively means that its energy policy is to a great extent influenced by EU objectives and that the liberalisation process that was set in train in the 1990s forms part of an EU wide effort to create an efficient and consumer responsive internal market in electricity.

The first law on the liberalisation of the Greek electricity market is the Electricity Law (Law 2773/1999), transposing Directive 96/92/EC into Greek law, that introduced two new entities in the regulatory system (namely, the new Regulatory Authority of Energy (RAE) and the transmission system operator (HTSO)), initiated the unbundling of the then vertically integrated Public Power Corporation (PPC) and allowed for competition in electricity generation and supply in the mainland grid (while transmission and distribution systems remained monopolies under the ownership of PPC), but failed to lead to liberalisation.

Law 2773/1999 was subsequently amended by Laws 2837/2000 and 2941/2001 and, more significantly, by Law 3175/2003, which transported some of the measures introduced through Directive 2003/54/EC (the second electricity directive) into national law. The major changes brought about by Law 3175/2003 included the provision that, as of 1 July 2007, all consumers would become eligible customers, the lifting of the requirement that suppliers had to own generating capacity, the introduction of a capacity payments system and the institution of new measures intended to ensure a more effective unbundling and transparency of accounts. Furthermore, the day-ahead market became obligatory for all generators and suppliers wishing to buy or sell electricity the following day.

The need to fully transpose the second electricity directive into Greek law as well as the fact that the Greek electricity market remained highly uncompetitive, despite the above-mentioned legislative initiatives, further led to the adoption of Law 3426/2005 on the acceleration of electricity market liberalisation, which came into force on 22 December 2005.

As for the most recent (and far-reaching) change to the pertinent legislative framework, this emanates from the passing of Law 4001/2011 on the operation of electricity and natural gas markets, hydrocarbon research, production and transmission systems and other regulations that entered into effect shortly before the submission of this country report (on 22 August 2011). This extensive piece of legislation aims at implementing the latest round of energy market reforms put forward by the European Commission (the Third EU Energy Package) and is a product of Greece's effort to comply not only with the relevant transposition deadline (March 2011) but also with its obligations stemming from the May 2010 Memorandum of Understanding on Specific Economic Policy Conditionality signed by Greece, the International Monetary Fund (IMF), the European Central Bank (ECB) and the European Commission, which, in regards to the energy sector, obligates the Greek government to

take up measures towards better safeguarding the opening up of the electricity and gas markets and aligning Greek policy with the EU *acquis communautaire*.

Finally, concerning electricity production from renewable energy sources (RES), Law 3468/2006, transposing Directive 2001/77/EC into national legislation, introduced a new legal framework for power generation based on renewable energy sources (and cogeneration) intended to boost the pertinent installed generating capacity that, at the time, was slightly below 1GW. Despite its good intentions, the introduced framework resulted in an unduly burdensome administrative licensing process and an infamous backlog in respective licence applications. Laws 3734/2009 and 3851/2010 modifying Law 3468/2006, that were subsequently adopted, have been, to a certain extent, successful in simplifying and accelerating the renewable energy source licensing process.

2 Organisation of the market

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

The Greek electricity market comprises of two different systems, namely, the 'mainland grid' that inter-connects all of continental Greece (including a few islands) and the 'non-interconnected islands' that have their own autonomous systems.

Competition in generation and supply in the mainland grid has been opened up as of 1 July 2007 for all consumers including households, but the PPC still holds a dominant, albeit steadily declining, market share. According to recent data (July 2011) from the Ministry of Environment, Energy and Climate Change, installed generating capacity in the mainland grid can be broken down (in terms of fuel source type and ownership) as follows:

- lignite-fired generation (4,744MW – PPC);
- oil-fired generation (718MW – PPC);
- natural gas-fired generation (1,917MW – PPC and 2,123MW – other market participants);
- large-hydro generation (3,018MW – PPC); and
- RES generation (141MW – PPC and 1,468MW – other market participants. A report published on 15 September 2011 raises the installed generating capacity from RES to 2,020MW).

As regards the transmission system (which remains a monopoly), Law 4001/2011 opts, despite the justified objections of private market actors, for the Independent Transmission Operator (ITO) unbundling option, under which the Transmission System Operator (TSO) is controlled by a vertically integrated undertaking, but has to comply with strict unbundling measures (required ownership of all assets necessary for full functioning; restrictions on shared services; separate identity, headquarters, IT supplier and auditor; no shareholding in generation or supply subsidiary of the holding company and vice versa; heavy compliance programme etc).

Thus, according to the newly enacted framework, the ownership and management of the Hellenic Transmission System is entrusted to the Independent Power Transmission Operator SA (IPTO or ADMIE), a newly formed subsidiary of the PPC, which is under the obligation to obtain the requisite certification by 3 March 2012.

Concerning the distribution system (that remained under the ownership and management of the PPC, despite a statutory provision dictating the transfer of the management of the said system to the HTSO by 1 July 2007), Law 4001/2011 obliges the PPC to transfer all of its distribution-related activities, within eight months of the entering into effect of the law, to a newly formed subsidiary (the Greek Electricity Distribution System Operator (DEDDIE) SA – DSO), which shall be independent in terms of its legal formal, organisation and decision making. The DSO is also entrusted with the management of the ‘non-interconnected islands’ autonomous systems (that includes the management of electricity generation and sales of power).

Finally, the buying and selling of electricity on the wholesale market operates pursuant to a ‘mandatory pool system’, whereby electricity producers and importers submit competitive offers on a daily basis for each hour of the following day. This day-ahead market, currently operating under the auspices of the HTSO, will be run, following the transfer of the transmission-related activities of the HTSO to the newly formed IPTO under article 99 of Law 4001/2011, by the Electricity Market Operator SA (EMO), trading as LAGIE SA, according to a revised Power Exchange Code that has already been drafted and is currently in the first public consultation phase (until 16 September 2011). Both the new and revised Grid Control and Power Exchange Codes are expected to be published by December 2011.

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

Until the recent enactment of Law 4001/2011, the construction of a power plant and the generation of electricity required a generation licence granted in accordance with Ministerial Decision 17951/2000 (Licensing Regulation) by the minister of environment, energy and climate change (minister of environment) following an opinion of the RAE. Article 132 of the new law on the operation of electricity and natural gas markets stipulates that generation licences are to be granted directly by the RAE, according to the provisions of the law and the (new) Licensing Code (to be approved by a decision of the minister of environment after the issuance of an opinion by the RAE).

Paragraph 3 of article 132 of Law 4001/2011 provides a list of factors that must be taken into consideration by the new Licensing Code as it specifies the criteria for the evaluation of pertinent applications, while paragraph 11 of the said article exempts certain projects from the obligation to obtain a generation licence.

4 Interconnection policies

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

The responsibility for granting third-party access to the transmission grid on non-discriminatory terms falls, in most cases, upon the pertinent TSO (in Greece’s case, the HTSO). However, the HTSO’s failure to fully implement the transparency requirements set by Regulation 1228/2003 resulted in the European Commission addressing a reasoned opinion to the Greek government. The fact that the Grid Control and Power Exchange Code (Ministerial Decision 8311/2005), that provided for the terms, conditions and criteria of access to the grid in a non-discriminatory, transparent and objective manner, only entered into force in 2010, did little to ameliorate the situation and third-party complaints appeared justified.

The enactment of Law 4001/2011 and the changes brought about in this respect (unbundling through an ITO, new and revised Grid Control Code currently circulated) are expected to lead to a fairer and more transparent system.

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?

Electricity generation from renewable energy sources (RES) ranks high on the government agenda. In fact, Law 3851/2010 that entered into force on 4 June 2010, sets out the national targets for RES production in line with Directive 2009/28/EC, so that by 2020 RES covers 20 per cent of the gross final energy consumption.

The said statute addressed some of the administrative barriers and disfunctionalities of the legal framework for RES and cogeneration set out by Law 3468/2006 (by uncoupling the RES production licence process from environmental licensing, by having the RES production licence granted by the RAE and not by the minister of environment, by excluding projects of a certain size from the production licence requirement and so on) and, at the same time, retained the provision of strong financial incentives for renewable energy generation through new feed-in tariffs (with the exclusion of photovoltaic (PV)-generated energy, for which generous feed-in tariffs had been set by Law 3734/2009).

Furthermore, a number of recently adopted ministerial decisions (concerning mainly the application procedures for PV systems) have enhanced legal certainty, thereby contributing to a healthier investment climate.

Finally, it is worth mentioning that the much anticipated new Investment Incentives Law (Law 3908/2011), which entered into effect on 1 February 2011 and replaces Law 3299/2004, continues to provide for investment incentives for RES projects, but excludes PV-generated energy from state aid support.

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?

The government’s policy in relation to climate change results in increased emphasis on electricity generation from RES (primarily wind and solar energy), that are, in effect, being subsidised through attractive feed-in tariffs. This, combined with the fact that the gradually approaching Third Trading Period under the EU ETS is expected to result in higher carbon prices, explains both the PPC’s efforts to phase-out older lignite-fired plants and the various estimates on the necessary electricity cost increases. Relevant in this respect are:

- a decision issued on 1 October 2010 by the minister of environment on the proportion of installed capacity per RES technology, project size and category of producers and its phasing from 2014 to 2020;
- the subsequently adopted ‘National Renewable Energy Plan’ (in the scope of Directive 2009/28/EC); and
- RAE Decision 643/2011, issued on 13 May 2011, concerning the methodology for the incorporation of carbon emission costs in the offers that generators submit to the day-ahead market.

7 Government policy

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

Current government policy does not encourage the development of nuclear power plants. The issue has been debated in certain forums, but a pertinent government policy change does not appear likely in the foreseeable future.

Regulation of electricity utilities – transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

Under the legislative framework prior to the enactment of Law 4001/2011, the Greek transmission grid was owned by the PPC and managed by the 51 per cent state-owned HTSO, which, in addition to its duties as a system operator, also acted as a market operator and a clearing house that settled the accounts between market participants on a daily basis. Both the distinct licensing requirements of the PPC and the HTSO and their respective obligations related to the development, maintenance, management and operation of the high-voltage grid were set out in chapter 4 of the Electricity Law (Law 2773/1999) and in the secondary legislation on the transmission network (namely, mainly the Grid Control and Power Exchange Code).

Under the current (namely, post Law 4001/2011) scheme, that is expected to be fully operational after both the transfer of all transmission network related fixed assets and activities and the revision of the Grid Control and Power Exchange Codes have been completed, the ownership as well as the development and operation of the Greek transmission grid is entrusted to the newly formed IPTO (a subsidiary of the PPC). The transmission network remains, thus, a monopoly, but steps have been implemented towards a fully unbundled electricity transmission system operator.

9 Eligibility to obtain transmission services

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

According to article 94 of Law 4001/2011, access to the transmission grid may be granted to licensed generators and suppliers, to those exempted from the obligation to hold such a licence and to eligible customers (the latter defined as customers who are free to purchase electricity either from the supplier of their choice or directly according to the provisions of this law). The modalities (terms and conditions) for the non-discriminatory provision of transmission services and access to the transmission network are regulated in the Grid Control Code, currently under revision.

10 Government incentives

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

The HTSO and, following the enactment of Law 4001/2011, the IPTO cannot profit from government incentives in the form of rate or tax benefits in relation to the expansion of the transmission grid. In fact, the newly enacted Investment Incentives Law (Law 3908/2011) stipulates that its aid scheme (tax relief, money grant or leasing subsidy) shall not apply inter alia to investment plans 'of public corporations and organisations or their subsidiaries in which they hold over 49 per cent of the share capital, and investment plans of companies in which the State or a public law legal person or a first-level or second-level local authority holds over 49 per cent of the share capital or which are regularly or occasionally subsidised by them, where the subsidy accounts for over 50 per cent of their annual revenue'. It should be noted, however, that Law 4001/2011 imposes specific duties upon the IPTO vis-à-vis the expansion of the transmission grid and foresees instances where the RAE can step up and effectively force the IPTO to take measures that will bring about the necessary investments.

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 rates for the provision of transmission services (previously approved by the minister of environment) are, under the new scheme, approved by the RAE, following a proposal by the HTSO (henceforth the IPTO). The TSO's methodology for determining such rates, that essentially reflects the running costs plus a moderate profit, also requires the prior approval of the RAE. The terms for the provision of transmission services are laid out in the Grid Control Code.

12 Entities responsible for assuring reliability

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

Law 4001/2011 entrusts both the ownership of the Greek transmission grid and its operation to the IPTO. Accordingly, the responsibility of assuring reliability of the transmission grid and security of supply falls primarily upon this newly formed entity. To this end, the IPTO must annually prepare and submit to the RAE a 10-year development programme, specifying the ongoing and scheduled investments, the implementation of which is then to be closely monitored and evaluated by the RAE. Should the RAE determine that the IPTO is falling behind in its respective obligations (namely, in ensuring the necessary investments foreseen in the development programme), it can, as previously mentioned, effectively step in and take action to secure that the required measures are carried out.

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

The management of the distribution system, which under the previous scheme remained under the PPC despite a statutory provision dictating its transfer to the HTSO by 1 July 2007, is henceforth to be entrusted to the DSO (according to article 122 – 131 of Law 4001/2011), a newly formed subsidiary of the PPC that shall be independent in terms of its legal form, organisation and decision making. Following the completion of the transfer of distribution-related activities of the PPC to the DSO, the latter is obliged to obtain from the RAE an Operating (Distribution) Licence. The said licence sets out the duties and rights of the DSO in respect of the management of the distribution system as well as its obligations and responsibilities vis-à-vis the sole owner of the said system (namely, the PPC that, in turn, is by virtue of article 122 of Law 4001/2011, granted a 'Licence of Exclusive Ownership' of the distribution grid).

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?

According to article 127 of Law 4001/2011, access to the distribution grid is granted to licensed operators, operators that are exempted from the obligation to obtain such licenses as well as to all suppliers and customers, under rates, terms and conditions provided for in the Distribution Grid Code (to be issued).

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?

Rates for the provision of distribution services were, under the previous scheme (and in the absence of a Distribution Grid Code), set by the PPC and approved by the minister of environment following an opinion of the RAE. The new framework entrusts the approval of such rates to the RAE (following a proposal by the DSO), which is the entity also responsible for approving the methodology used in calculating the rates. Article 128 of Law 4001/2011 duplicates the provision contained in article 23 of Law 3426/2005, which stipulates that the terms and conditions for the provision of distribution services are set out in the Distribution Grid Code.

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?

Prior to the enactment of Law 4001/2011, the sale of power to customers required a supply licence issued in accordance with Ministerial Decision 17951/2000 (the ‘Licensing Regulation’) by the minister of environment following an opinion by the RAE. The new energy law stipulates that the supply licence is henceforth to be issued directly by the RAE in accordance with the Licensing Code (article 134), which, in turn, shall be issued by decision of the minister of environment at the recommendation of the RAE (article 135).

Paragraph 2 of article 134 further states that the RAE shall grant the supply licence under the terms and conditions provided for in the Licensing Code, if the supplier:

- is a *société anonyme* or a limited liability company with a share capital of at least €600,000;
- possesses the requisite organisational and administrative structure for the reliable, consistent and sound exercise of electricity supply activities; and
- has the requisite financial robustness and solvency, as evidenced by the facts and data included in its application.

Last but not least, paragraph 6 of the above mentioned article stipulates that the exercise of electricity supply activities in any other EU member state, in accordance with its legislation, provides a right for the granting of a corresponding licence in Greece (under a specific procedure to be provided for in the Licensing Code), so as not to discriminate between suppliers who are either already active or wish to enter the Greek market.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

As of 1 July 2007, all consumers have become eligible customers and are thus subject to the power sales tariffs applicable to eligible consumers in accordance with the Supply Code (Ministerial Decision 4524/2001) currently in force.

The said Code stipulates that suppliers are free to decide their tariffs and pricing as well as the terms of the supply contracts, but further dictates that, as long as the PPC covers more than 70 per cent of the domestic electricity consumption, its tariffs must be approved by the minister of environment following an opinion of the RAE. One must, however, differentiate between high-voltage customers on the one hand, and medium and low-voltage customers on the other. More specifically, power sales tariffs for high-voltage customers are, according to a 2007 amendment to the Supply Code, not regulated or approved by the minister of environment (but for the setting of a maximum permitted price), while, in accordance with article 7 of Law 3899/2010, PPC’s power sales tariffs for medium and low-voltage customers ‘shall be approved until 30 June 2013 by decisions of the minister of environment, energy and climate change following an opinion of the RAE’.

Of considerable significance, in this respect, is RAE Decision No. 692/2011, issued on 6 June 2011, on the ‘basic principles of electricity pricing’.

18 Rates for wholesale of power

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

Rates for sales of wholesale power are determined through the day-ahead market, on the basis of the ‘marginal pool price’ (with the exemption of RES producers that are not paid the marginal pool price but are, rather, reimbursed in accordance with the applicable feed-in tariffs).

19 Public service obligations

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

Electricity utilities that sell power are indeed subject to public service obligations (PSO), but the existing arrangements have raised a host of issues and have resulted in legal challenges being brought before domestic and European forums. The framework has now been partly revised through article 55 – 58 of Law 4001/2011 (that transports the provisions of article 3 of Directive 2009/72/EC into Greek law), that inter alia regulates:

- matters related to the ‘supplier of last resort’ and the ‘universal service provider’;
- the procedure for imposing additional PSO; and
- the modalities for determining whether such services are assumed by one or more specific utilities or by all undertakings operating in the electricity sector.

Regulatory authorities**20 Policy setting**

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

Energy-related activities are, according to article 3 of Law 4001/2011, subject to supervision by the state, to be exercised by the minister of environment and the RAE within the framework of their remits and Greece’s long-term energy plan. The said long-term plan is to take account of existing and projected energy reserves at national, regional and international level, the intra-community border programme to develop electricity and natural gas systems and trends on the international energy market.

The long-term energy plan will be prepared on a 10-year rolling basis in the form of a decision by the minister of environment and is to be notified to the competent standing committee of the Hellenic Parliament. Before issuing his decision, the minister of environment will request opinions from the RAE and the Economic and Social Committee and may request opinions from producers and specialists.

21 Scope of authority

What is the scope of each regulator’s authority?

Law 4001/2011 enhances the scope of the RAE’s authority substantially. More specifically, the RAE:

- monitors the security of energy supply;
- rules on whether or not licences to pursue energy-related activities should be granted, amended or withdrawn;
- decides, following public consultation with existing and potential users, on amendments to the development plans prepared by the competent transmission operators;
- rules on the methodology used to calculate the prices of non-competitive activities;

Update and trends

The recent enactment of Law 4001/2011, following a heated and controversial public debate, undoubtedly presents a milestone in Greece's efforts to align itself with its European law obligations. This, however, should not be regarded as the end of what clearly is an ongoing, challenging process. In fact, the latest update (at the time of submission of this country report) of the 'Memorandum of Understanding on Specific Economic Policy Conditionality' (MOU) (fourth update – 2 July 2011), signed by Greece, the IMF, the ECB and the European Commission, calls for additional measures, some going beyond those contained in Law 4001/2011, to be implemented within specific deadlines. More specifically, the updated MOU foresees that:

- the government finalises the remedies to ensure the access of third parties to lignite-fired electricity generation (Q2-2011);
- to ensure that network activities are unbundled from supply activities, '[...] all necessary transfers of staff and assets to the TSO are completed' (Q3-2011) and '[...] all necessary transfers of staff to the DSO are completed' (Q1-2012);
- the government starts implementing the measures ensuring the access by third parties to lignite-fired electricity regulation (Q3-2011);

- detailed plans are presented for ensuring a maximum market opening as regards the non-interconnected system, covering among others, access of suppliers to the non-interconnected system markets, in particular in Rhodes and Crete. The government submits a request for derogation under certain conditions of article 44 of Directive 2009/72/EC for small isolated systems (Q3-2011);
- hydro reserves are effectively and fairly managed by an independent body (Q3-2011);
- the unbundling of the TSO (for electricity and gas) and DSO (for electricity) is effectively completed (Q1-2012);
- the government removes regulated tariffs for customers except households and small enterprises (Q4-2011);
- further measures are adopted to ensure that the energy component of regulated tariffs for households and small enterprises reflects, at the latest by June 2013, wholesale market prices, except for vulnerable consumers; and
- the government completes the implementation of the measures to ensure access by competitors of PPC to lignite-fired electricity generation. Third parties can effectively use lignite-fired generation in the Greek market (Q2-2012).

- decides on exemptions from the obligation to provide third party access and compulsory unbundling;
- monitors communications between independent transmission operators and the vertically integrated undertakings to which they belong;
- is responsible for the certification of transmission system operators; and
- adopts, monitors and supervises the application of interconnection access rules.

Furthermore, as part of its remit, the RAE monitors and supervises the operation of the energy market, prepares studies, drafts, publishes and submits reports, makes recommendations, issues decisions or proposes that the competent bodies take the necessary measures, including issuing regulatory acts and individual notices, especially for the purpose of compliance with competition rules and the regulatory obligations imposed under Law 4001/2011, consumer protection, fulfilment of their obligations by general interest service providers, environmental protection, security of supply and the development of the EU internal energy market, as well as supervises the application of consumer protection measures. Article 30 of Law 4001/2011 finally stipulates that the RAE 'shall issue a decision, to be published in the Government Gazette, adopting the rules and codes provided for under the present law, where necessary on the advice of the competent operator'.

The minister of environment retains responsibility for the long-term energy plan, strategic planning as well as primary and secondary legislation.

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 RAE, established by the Electricity Law (Law 2773/1999), is an independent regulatory authority. It has a legal personality and appears independently before courts. Law 4001/2011 further stipulates that the RAE 'shall only be subject to parliamentary and judicial control' (article 5) and that it 'shall have administrative and financial independence and its own budget' (article 6).

The said independent authority comprises seven members (all selected by the minister of environment), of which three (its chairman and two vice chairmen) are appointed by the Council of Ministers and four by the minister of environment. They are all senior officers of state, who enjoy full personal and operational independence in the exercise of their duties and are not subject to scrutiny or supervision by the government or other administrative bodies.

The RAE's independence is, furthermore, secured by the fact that its members, who serve five year terms, cannot be recalled during their term of office and are not allowed to hold stocks or shares in undertakings subject to direct or indirect supervision by the RAE, with the exception of indirect holdings through mutual funds or pension schemes which invest in equities.

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?

Applications for review of individual executive acts issued by the RAE may be lodged within 30 days of publication or notification of the decision. An application for review before the regulatory authority, which is an administrative appeal, must be lodged in order for a subsequent application for judicial review (either in the form of an application for annulment or of an appeal) to be admissible.

Rulings on the above mentioned administrative appeals may be contested before the Athens Administrative Court of Appeal using the legal remedy of an application for annulment (writ of annulment) in regard to decisions granting, refusing, amending or withdrawing licences or of an appeal (recourse) in all other cases. Judgments by the Athens Administrative Court of Appeal on applications for annulment or on appeals may be appealed against with an appeal or a writ of certiorari, respectively, before the Council of State (Greece's supreme administrative court). If the decision is of a regulatory nature, it may be contested in an application for annulment before the Council of State at first and last instance.

The grounds for appeal can cover the full range of substantive and procedural objections that can be raised against any enforceable administrative order. The grounds for an application of annulment are the lack of competence of the authority to issue the act, the infringement of a substantial norm of administrative process, the infringement of substantive law and the abuse of discretionary power.

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?

The main entities involved in acquisition and merger control are the European Commission, which has the power to review concentrations and investigate mergers, acquisitions, structural joint ventures and other transactions that result in a lasting change of control and meet the jurisdictional thresholds of Council Regulation 139/2004 (the EC Merger Regulation), the Hellenic Competition Commission (HCC), an independent regulatory authority, acting in accordance with the provisions of newly enacted Law 3959/2011 on the protection of free competition (the Greek Competition law), and the RAE, which monitors and supervises the extent and effectiveness of competition in the energy market and plays a central role in the separation of accounts of undertakings engaged in energy-related activities.

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?

The criteria and procedures that apply with respect to the review of mergers, acquisitions and other transfers of control are laid out in Law 3959/2011 on the protection of free competition. The provisions contained therein are enforced by the HCC and apply to concentrations in general, including any kind of merger between two or more undertakings, to the acquisition of direct or indirect control of an undertaking by a person controlling at least one undertaking and to joint ventures.

For the purposes of this report, it is sufficient to say that:

- a concentration is subject to pre-merger notification if the parties have an aggregate worldwide turnover of at least €150 million and at least two participating undertakings have an aggregate turnover exceeding €15 million in Greece;
- the HCC must decide within one month of the above-mentioned notification whether a concentration falls within the scope of the law and whether it raises concerns for restricting competition;
- if the HCC rules that this is the case, then its chairman must order an investigation; and
- the HCC's decision approving or disallowing a proposed concentration must be issued within 90 days of the decision ordering full investigation.

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?

Infringements of general competition law come within the HCC's area of jurisdiction, while the RAE has the power to investigate, prevent or prosecute anti-competitive or manipulative practices in the electricity sector within its remit under Law 4001/2011. The relations between the RAE and the HCC (as regards inter alia their respective auditing powers, their duties towards each other and the data exchange between them) are expressly addressed and regulated in article 26 of Law 4001/2011.

27 Determination of anti-competitive conduct

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

The standards applied to determine whether conduct is anti-competitive or manipulative essentially mirror the provisions of articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Thus, Law 3959/2011 expressly prohibits any transactions and practices that aim to prevent, restrict or distort competition (by directly or indirectly fixing purchase or selling prices or any other trading conditions, by limiting or controlling production, markets, technical development or investment etc), as well as any abuse of a dominant position in the market or in a substantial part of it.

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 regulator's authority to remedy anti-competitive or manipulative practices can be exercised through a decision declaring that the practice in question breaches competition law and should be discontinued and the imposition of financial penalties. Its authority to preclude such practices arises in connection with the pre-merger notification requirement and the procedure initiated in respect of the review of concentrations in general.

International**29 Acquisitions by foreign companies**

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

With the exception of transmission and distribution activities, there are no special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies.

Andreas Lionis & Associates

Basil C Scouteris

scouteris@lionisandassociates.com

98 – 99 Naiadon Street
Palaio Faliro
175 62 Athens
Greece

Tel: +30 210 981 3351
Fax: +30 210 988 1606
www.lionisandassociates.com

30 Cross-border electricity supply

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

With regard to cross-border electricity trading with other EU member states (in Greece's case, Italy and Bulgaria), the basic principles on tariffs and capacity allocation are laid down by EC Regulation No. 714/2009, which aims at enhancing cross-border supply of electricity and network access in the context of the EU's internal market and establishes the European Network of Transmission System Operators (ENTSO) for Electricity.

Interconnection capacity rights for energy exports to Italy and energy imports from Bulgaria, FYR Macedonia and Albania are allocated and assigned through regular auctions carried out by the HTSO (in future, by the IPTO) in accordance with the specific rules and procedures set out in the Grid Control and Power Exchange Code.

Transactions between affiliates**31 Restrictions**

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

Pursuant to article 141 of Law 4001/2011, integrated undertakings shall keep separate accounts for the activities of generation, transmission, distribution, supply or provision of public service obligations, as they would have done if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. Electricity utilities are, furthermore, obliged to report all their transactions with affiliated undertakings (in which they have a shareholding interest) and auditors of the said integrated utilities must audit the unbundled accounts as if these belonged to different undertakings.

32 Enforcement and sanctions

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

Law 4001/2011 stipulates that the annual accounts of electricity utilities shall, following their approval by the general meeting of the shareholders, be submitted to the RAE, which retains the right to undertake inspections at any time in order to ascertain if and to what extent electricity companies comply with their obligation to maintain separate accounts. Non-compliance can result in the imposition (by the RAE) of a fine of up to 10 per cent of the electricity utility's annual turnover. The fine shall be in proportion to the severity and frequency of the infringement.



Annual volumes published on:

Air Transport	Life Sciences
Anti-Corruption Regulation	Merger Control
Arbitration	Mergers & Acquisitions
Banking Regulation	Mining
Cartel Regulation	Oil Regulation
Climate Regulation	Patents
Construction	Pharmaceutical Antitrust
Copyright	Private Antitrust Litigation
Corporate Governance	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Direct Investment	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipping
Insurance & Reinsurance	Tax on Inbound Investment
Intellectual Property & Antitrust	Telecoms and Media
Labour & Employment	Trademarks
Licensing	Vertical Agreements

**For more information or to
purchase books, please visit:**
www.gettingthedealthrough.com



The Official Research Partner of
the International Bar Association



Strategic research partners of
the ABA International section