

# Electricity Regulation

*Contributing editors*

Daniel Hagan and Kirsti Massie



2017

GETTING THE  
DEAL THROUGH 

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*Contributing editors*  
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**White & Case LLP**

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Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3708 4199  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016  
No photocopying without a CLA licence.  
First published 2013  
Fifteenth edition  
ISSN 1479-3210

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



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# Poland

**Tomasz Chmal**

**White & Case M Studniarek i Wspólnicy – Kancelaria Prawna sp.k.**

## 1 Policy and law

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

#### Government policy

The main objectives of government policy for the electricity market have been set out in the Energy Policy 2030 adopted in 2009 by the Council of Ministers. There are six areas identified as a priority.

#### Improving energy efficiency

Within the objective of improving energy efficiency, on the basis of Energy Policy 2030, the support system based on ‘white certificates’ was implemented. Furthermore, the government policy focuses on the development of high-efficiency cogeneration and provides support to investments in energy conservation.

#### Increased security of fuel and energy

This objective envisages a further increase in fuel security and energy based on national resources, mainly coal and lignite. At the same time, the government plans to develop the cross-border connections enabling the importation of energy.

#### Diversification of electricity generation with introduction of nuclear power

In recent years, in accordance with the Energy Policy 2030, the legal framework for the construction and operation of nuclear power plants has been adopted. The first Polish nuclear power plant is to be constructed in Poland in the coming years.

#### Development of Renewable Energy Sources (RES), including biofuels

The Energy Policy 2030 set the objective of a 15 per cent share of RES in final energy consumption by 2020.

#### Development of competitive fuel and energy markets

In this area, the main objective is to counteract excessive price increases and the protection of vulnerable customers by active regulatory involvement of the President of the Energy Regulatory Office.

#### Reduction of impact of energy on environment

In order to achieve the environmental objectives, the Energy Policy 2030 highlighted methods for reducing emissions of CO<sub>2</sub>, SO<sub>2</sub> and NO<sub>x</sub>, without the need to introduce significant changes in the structure of production. It is also planned to support the development of carbon capture and storage (CCS) technology, as well as the implementation of obligations under the new ETS Directive.

On 16 November 2015, a new Polish government was appointed. The new government established a new Ministry of Energy that replaced the Ministry of Economy in terms of responsibility for state energy policy and also took over responsibility for supervision of state-owned energy and coal companies (except for electricity and gas TSOs). The electricity TSO is supervised by the secretary of state at the Chancellery of the Prime Minister of Poland, who is also the government’s plenipotentiary for strategic energy infrastructure affairs.

## Legislative framework

The main piece of legislation governing the electricity sector in Poland is the Energy Law Act, consistent with EU regulations on energy market. The Energy Law Act specifies rules for the provision of fuel and energy, duties of the Energy Regulatory Office (ERO), rules for concessions and energy tariffs, rules for power equipment, installations networks, and rules for the exploitation thereof. Other important regulations for the electricity sector are included in the Renewable Energy Sources Act, Energy Efficiency Act and various regulations issued by the Minister of Economy (now Minister of Energy) regarding the calculation of tariffs, transmission and distribution networks. The electricity sector is also influenced by the Geological and Mining Law Act, which specifies requirements for carrying out geological works, the rules applicable to mining operations and extracting minerals from deposits and requirements for the protection of mineral deposits and groundwater.

## 2 Organisation of the market

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

The economic structure of the energy sector and the degree of market concentration has primarily been shaped by the horizontal and vertical consolidation of the electricity market by companies belonging to the State Treasury, which was a result of the implementation of government policy in 2006. A direct result of the consolidation was the emergence of the four state-owned energy capital groups operating through subsidiaries in the generation, distribution and supply markets: PGE, Tauron, Enea and Energa.

The structure and mechanisms concerning the functioning of the market do not differ from those which have developed in most other European countries. Market participants have broad access to various electricity sales options and access to information regarding volumes and prices at which electricity is sold and contracted for the wholesale market.

### Generation

Poland currently operates 19 power plants producing electricity from lignite and hard coal, which together produce more than 80 per cent of the energy consumed in Poland. Additionally, energy is produced from renewable energy sources and CHP. In Poland over 50 CHP power plants currently in operation are located in large urban areas and over 160 operating CHP power plants are located in the vicinity of industrial plants.

### Transmission and distribution

Transmission networks with a voltage of 220kV and 400kV are maintained by the Polish Power Grid Company (PSE SA), a 100 per cent state-owned company, which is the owner and the sole operator of the transmission grid.

Distribution networks with a voltage of 230V to 110kV are owned and operated by distribution system operators (DSO) whose networks are directly connected to the transmission network. As of 2015, there were 170 DSOs operating in Poland, and among them, five large DSOs belonging to vertically integrated undertakings. As these five DSOs are parts of vertically integrated undertakings they are subject to an obligation to separate distribution activities from generation operations or

other economic activities of a vertically integrated undertaking (as a result of unbundling requirements).

Crucial for the distribution market is the independence of operators and the equal access rights available to all market participants. The independence of the DSOs is guaranteed by unbundling and the Compliance Programme, which specify the obligations of operators in order to ensure non-discriminatory treatment of the users of the system.

#### Sale

Total consumption of electricity in Poland as well as domestic electricity production in 2015 was over 161TWh. Exported electricity exceeded imported electricity by 334GWh only. Electricity generators (with certain exceptions) are under the obligation to sell no less than 15 per cent of electricity generated through power exchanges in Poland.

Currently, the market is divided into three main segments.

#### Commodity market

Energy trading on the Polish Power Exchange (PPE) is mainly a Day-Ahead Market. The PPE also operates the Commodity Derivatives Market for Electricity, as well as the CO<sub>2</sub> Emission Allowance Market. Commodity market PPE is a major trading platform. The total volume traded in 2015 was over 186TWh.

#### Contracts

Energy trading on the contract market is based on bilateral agreements concluded between energy producers and energy companies and customers. The volume of electricity traded through bilateral transactions in 2015 was over 58TWh.

#### Balancing market

The balancing market is a specific area of the energy market, on which the differences between the transactions made between market participants and the actual demand for electricity are balanced.

There are over 17 million electricity customers in Poland, out of which 14.5 million are household customers.

The highest share in electricity sales to final customers is held by incumbents who remained, after unbundling, as a party to sale and distribution agreements with customers. They also perform the function of designated sellers for household customers who did not elect a new supplier. In 2015, there were five designated sellers and more than 100 alternative trading companies actively engaged in the sale of electricity to end users.

### 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 or extension of a generation facility falls under the general requirements of the investment process and will require an environmental decision and administrative permits for localisation, construction and usage. A separate legislative framework is envisaged for nuclear power plants.

The generation of electricity, except for generation in (i) conventional energy installations of the capacity below 50MW, (ii) certain small RES installations, and (iii) agricultural biogas plants or generation of energy solely from agricultural biogas in cogeneration or solely from biofuels, requires a concession for the production of electricity issued by the President of the ERO. A concession is issued for the period up to 50 years.

#### 4 Grid connection policies

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

A (transmission/distribution) system operator is obliged to conclude an agreement for connection with entities requesting connection on equal terms, provided that the interconnection is technically and economically possible and the applicant meets the interconnection conditions specified by the grid operator. In order to be connected to the grid an applicant must complete an application form, provide technical data

and pay the relevant interconnection fee. RES installation benefit from priority access to the grid.

#### 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?

Until 1 July 2016, all RES installations, regardless of their capacity or type of renewable technology used, were eligible for support in the form of mandatory purchases of energy by obligated suppliers and green certificates and the obligation of certain market participants to either purchase green certificates in amounts corresponding to a given percentage of their energy sales, consumption or trading, or to pay a substitute fee.

The new support regime which entered into force on 1 July 2016, foresees a gradual departure from support system based on green certificates and mandatory RES energy purchases and a switch to the auctioning system in which RES installations bid to receive support in the form of guaranteed prices for predetermined amounts of energy generated each year. The new renewable energy support scheme provides for preferential support mechanisms for RES technologies using local resources (biomass) and ensuring the stability of the grid (especially co-combustion of biomass) to the detriment of the development of certain other technologies (such as wind and solar energy technologies).

Poland established also a support scheme for CHP technologies based on tradable certificates of origin and an obligation of certain market participants to either purchase such certificates in amounts corresponding to a given percentage of their energy sales, consumption or trading, or to pay a substitute fee. The scheme is to expire in at the end of 2018. Discussions on possible extensions of the support scheme are ongoing; the new scheme is, however, likely to take the form of auctions.

#### 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?

In line with the EU regulations, the Polish government has set a target of a 20 per cent reduction in CO<sub>2</sub> emissions by 2020 and at least 40 per cent by 2030, which will impact the market, as most of the energy is currently generated by coal and lignite power plants.

#### 7 Storage

##### Does the regulatory framework support electricity storage including research and development of storage solutions?

Electricity storage installations are just being developed in Poland. The Energy Efficiency Act indirectly provides that storage facilities should be promoted in order to increase energy efficiency. The Ministry of Development and the Ministry of Energy intend to promote the development of storage facilities, including, among others, as part of the e-mobility programme. The Polish Chamber of Energy Storage, a non-governmental organisation, was created in order to promote electricity storage installations.

#### 8 Government policy

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

The Energy Policy 2030 envisages the construction of the first nuclear power plant. The details on the support scheme for nuclear power plants have not yet been revealed. Various models of the 'contracts for difference' are currently the subject of discussion.

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**Regulation of electricity utilities – transmission**


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**9 Authorisations to construct and operate transmission networks**
**What authorisations are required to construct and operate transmission networks?**

The construction of transmission networks falls under the Act on special rules for the preparation and implementation of strategic investments in transmission networks. The Act is an implementation of EU Regulation No. 347/2013 and is intended to facilitate and accelerate the construction of transmission networks of strategic importance. The Act applies to 23 high-voltage lines of 400kV listed in the Annex to the Act. The Act provides for, among other things, the possibility of expropriating property for the planned grids and a compensation mechanism. Remaining investments not included in the Annex to the Act will fall under general requirements for the investment process.

A transmission concession issued by the President of the ERO is required for the operation of a transmission network.

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

On the basis of the Third Party Access (TPA) rules implemented into Polish law, transmission system operators must provide equal access to any interested final off-takers or energy trading undertakings. In order to benefit from energy transmission services an interested entity has to be interconnected with the grid and sign a transmission services agreement. An applicant has the right to be interconnected with the transmission network if technical and economic conditions for such connection exist and if the applicant meets grid connection requirements specified by the grid operator. The grid connection conditions are determined by the network operator on the basis of the Instruction on the Traffic and Operation of the Transmission Network approved by the President of the ERO and then forwarded to the applicant along with the draft connection agreement.

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**11 Government transmission policy**
**Are there any government measures to encourage or otherwise require the expansion of the transmission grid?**

As mentioned above, the Polish parliament adopted the Act on Special Rules for the Preparation and Implementation of Strategic Investments in Transmission Networks, simplifying the development of the transmission system. Moreover, many transmission grids are supported by the EU as Projects of Common Interest.

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**12 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 transmission system operator, operating under the conditions of a natural monopoly, is obliged to submit cost-based tariffs with rates for transmission services to the President of the ERO for approval. Terms and conditions regarding the provision of transmission services are set out in the industry code (Instruction on Traffic and Operation of Transmission Network) and in transmission agreements with the TSO.

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

The President of the ERO supervises the functioning of the transmission network, sets the technical standards, and approves tariffs. The TSO is under a duty to develop and maintain an efficient, coordinated and secure system for the electrical transmission network.

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**Regulation of electricity utilities – distribution**


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**14 Authorisation to construct and operate distribution networks**
**What authorisations are required to construct and operate distribution networks?**

The construction or distribution networks will fall under the general requirements of the investment process and will require an environmental decision and administrative permits for localisation, construction and usage. As distribution networks are considered public interest investments, they fall under special location rules.

A distribution concession issued by the president of the ERO is required for the operation and maintenance of a distribution network.

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

On the basis of the TPA rule, distribution system operators must provide equal access to any interested final off-takers or energy trading undertakings. In order to benefit from energy transmission services an interested entity has to be interconnected with the grid and sign a distribution services agreement. An applicant has the right to be interconnected with a distribution network if technical and economic conditions for such connection exist and if the applicant meets grid connection requirements specified by the grid operator. The grid connection conditions are determined based on the Instruction on the Traffic and Operation of the Distribution Network approved by the President of the ERO and then forwarded to the applicant along with the draft connection agreement.

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**16 Government distribution network policy**
**Are there any governmental measures to encourage or otherwise require the expansion of the distribution network?**

DSOs are required to prepare and provide their five-year plans for network development to the President of the ERO for approval. The plans should be updated. The scope of expansion is subject to discussion between the DSO and the President of the ERO.

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**17 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 provision of distribution services are regulated. Distribution system operators, as companies operating under the conditions of a natural monopoly, are obliged to prepare and submit such rates to the President of the ERO for approval.

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**Regulation of electricity utilities – sales of power**


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

Wholesale or retail trading of electric energy, except for trading through an installation with voltage of less than 1kV being owned by the recipient of energy, and electricity trading carried out on the Polish Power Exchange, requires a trade concession. Concessions are granted by the President of the ERO. An applicant for a concession has to prove, among other things, the technical and financial capability to perform the economic activity.

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**19 Power sales tariffs**
**Is there any tariff or other regulation regarding power sales?**

As a rule, the electricity tariff has to be approved by the President of the ERO. The President may, however, exempt the seller from the obligation to submit tariffs for approval, if he finds that it operates in a competitive environment. Currently, most vendors selling electricity to household consumers are required to submit tariffs for approval – wholesale and industrial customers are already released from such obligation.

## 20 Rates for wholesale of power

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

In 2008, sellers were released from the obligation to have tariffs for sales to industrial customers and for wholesale.

## 21 Public service obligations

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

In accordance with the Energy Law Act, the consumer has the right to access to a distribution network, to receive electricity in a continuous and reliable manner, to non-discriminatory treatment, and to the choice of a supplier. The supply of electricity may be withheld only in limited cases listed in the Energy Law Act.

Moreover, the President of the ERO selects in tenders a special category of energy sellers who are obliged to provide energy and distribution (transmission) services to end users that do not benefit from the right to choose the supplier based on complex agreements.

## Regulatory authorities

## 22 Policy setting

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

On a governmental level, the Minister of Energy is responsible for setting general energy policy, strategic priorities, the policy statement, as well as for the implementation of legislation. Also, the Ministry of Environment influences the electricity market by leading climate and environmental policy.

The main regulatory body is the President of the ERO, responsible for regulation in the energy sector, as well as the promotion of competition. The activities undertaken by the President of the ERO are aimed at meeting the goals set out by the Parliament, especially in the field of ensuring energy security, the economic and rational use of fuels and energy, the development of competition, counteracting negative effects of natural monopolies, as well as fulfilling obligations resulting from international agreements.

Within the scope of national nuclear safety and radiological protection, the regulatory body is the President of the Polish Atomic Agency (PAA). Currently, the President of the PAA is supervising the preparation of the investment process aiming at the construction of the first Polish nuclear power plant.

Moreover, as the biggest energy companies are at least partially state-owned, Minister of Treasury sets ownership policy for their operation and development and may exercise its ownership rights.

## 23 Scope of authority

### What is the scope of each regulator's authority?

The Energy Law Act sets out the principal objective and general duties of the President of the ERO. The President of the ERO is responsible for the regulation of the electricity sector within Poland by, inter alia, granting and withdrawing licences, approving and controlling the application of tariffs, appointing transmission, distribution, storage and LNG systems operators, as well as combined system operators, controlling the fulfilment of obligations to sell electricity through the power exchange, and obligations with respect to purchases of energy generated from RES and in co-generation.

Under the Atomic Law Act, the main tasks of the President of the PAA include exercising regulatory control and supervision over the activities leading to actual or potential ionising radiation exposure of humans and the environment.

## 24 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 President of the ERO is a central administrative body, established by the Energy Law Act as the main regulatory body for the gas, fuel and electricity markets. The President of the ERO is appointed by the

Prime Minister after open and competitive recruitment, his mandate lasts five years and he can be reelected only once. The President of the ERO may be dismissed from office by the Prime Minister only under conditions exhaustively listed in the Energy Law Act. The position of the President of the ERO was designed as a regulator with the aim of promoting competition for the benefit of consumers.

The President of the PAA is also a central administrative body, established by the Atomic Law Act. The President of the PAA is also appointed by the Prime Minister after open and competitive recruitment, on the motion of the Minister of Environment. The Minister of Environment supervises the activities of the President of the PAA. The President of the PAA may be dismissed from office by the Prime Minister at any time.

## 25 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?

Decisions of the President of the ERO may be challenged before a special branch of the District Court in Warsaw – the Court for Competition and Consumer Protection. Decisions of the President of the PAA may be challenged to an administrative court.

## Acquisition and merger control – competition

## 26 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?

#### European Commission

The EU Commission has the authority to review mergers in the electricity sector with a 'community dimension' under Regulation 139/2004 on the control of concentrations between undertakings (OJ 2004 L24/1) (Merger Regulation). The question of a 'community dimension' is determined by reference to two sets of thresholds set out in the Merger Regulation.

#### President of the Office of Competition and Consumer Protection

Pursuant to the Act on competition and consumer protection, the participants in the planned transaction are obligated to obtain prior clearance of the President of the Office of Competition and Consumer Protection (OCCP), if their turnover in the year preceding the application exceeded €1 billion worldwide or €50 million in Poland.

The notification to the President of the OCCP is obligatory, unless it is excluded due to the potentially insignificant impact of the planned transaction on the market, which relates to cases where the turnover of the target enterprise did not exceed the equivalent of €10 million in Poland in any of the two financial years preceding the notification or if the merger involves entities belonging to one capital group. It is also possible that a merger or acquisition is cleared subject to certain terms and conditions, for example, the resale of a part of assets. Moreover, the Act exceptionally allows clearing a transaction leading to a significant lessening of competition if it simultaneously contributes to economic development or technical progress or has a favourable impact on the economy.

## 27 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?

#### European Commission

Under the Merger Regulation, the Commission must complete its initial assessment (Phase I investigations) within 25 working days from the working day following the date of receipt of the notification (or receipt of complete information, if later). The period is increased to 35 working days if the Commission receives a request from a member state for the proposed merger to be referred back to the national competition authority or if the undertakings concerned offer commitments

to ensure the merger will not impede competition. From the Phase I investigations, the Commission may:

- find the merger does not fall within the ambit of the Merger Regulation and thus it has no jurisdiction (the parties should then consider if notification to the national authority);
- find it has jurisdiction, but the proposed merger does not raise serious doubts as to its compatibility with the common market; or
- initiate proceedings and conduct an in-depth investigation (Phase II investigations) if it considers that the proposed merger raises serious doubts as to its compatibility with the internal market.

If the Commission commences Phase II investigations, it must make a decision within 90 working days of the date on which such investigations are initiated. The period may be increased to 105 working days if the undertakings concerned offer commitments to ensure that the merger will not obstruct competition. Upon the conclusion of Phase II investigations, the Commission may clear the concentration (subject to certain conditions) or declare the concentration incompatible with the internal market.

It should be noted that, given the complexity of mergers in the energy sector, pre-notification to the Commission is advisable, and such pre-notification can add to the timetable generally.

#### **President of the Office of Competition and Consumer Protection**

Transactions that do not raise significant competition issues are reviewed in Phase I within one month from commencement. More complex transactions are reviewed in Phase II within an additional four-month period. If the waiting period expires without any response from the President, the transaction is deemed approved. The above-mentioned time limits do not start until all undertakings concerned file their notifications. The time limits do not include the periods necessary to perfect the notification or supplement necessary information, or the time until the fee is paid.

The notifying parties must refrain from carrying out the transaction until they obtain a decision of the President of the OCCP, or until the deadline for a ruling on the matter.

As part of the proceedings leading up to the issuance of a decision permitting the concentration, the President of the OCCP will examine whether the concentration will significantly limit competition in the market. The authority may only issue a decision prohibiting the concentration if the concentration would significantly limit competition, meaning more specifically the creation or strengthening of a dominant position in the market. If the planned transaction raises serious concerns under competition law, the authority may establish conditions that must be fulfilled by the parties in order to obtain consent to the concentration.

### **28 Prevention and prosecution of anticompetitive practices**

#### **Which authorities have the power to prevent or prosecute anticompetitive or manipulative practices in the electricity sector?**

On the EU level, the European Commission can enforce articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). On the national level, the President of the OCCP has the general authority to investigate and prosecute anticompetitive behavior set out in the Act on Competition and Consumer Protection or the relevant provisions of the TFEU. The President of the OCCP may act as long as the Energy Law Act does not explicitly reserve certain powers to the President of the ERO. In matters regulated by specific provisions of the Energy Law, the President of the ERO is the entity responsible for the development of competition in the energy market.

### **29 Determination of anticompetitive conduct**

#### **What substantive standards are applied to determine whether conduct is anticompetitive or manipulative?**

The Act on Competition and Consumer Protection prohibits agreements between undertakings that are intended to or which have the effect of preventing, restricting or distorting competition within Poland and may affect trade within Poland. Certain agreements may be exempt if they yield benefits that outweigh any anticompetitive effects, or if they fall within one of the categories of agreements that benefit

from a block exemption. Article 101 TFEU contains the same restrictions as the Act on Competition and Consumer Protection, except it applies to agreements that have an EU-wide impact. The TFEU also contains several exemptions to article 101, including block exemptions.

The Act on Competition and Consumer Protection prohibits any conduct that amounts to an abuse of a dominant position on the relevant market. Similarly, article 102 TFEU prohibits abuse of a dominant position as applied to trade between EU member states. In order to assess whether an undertaking enjoys a dominant position, it will be necessary to identify the product and geographical market, and assess the relevant undertaking's position within that market. Very broadly, there is a presumption of a dominant position if an undertaking has over 40 per cent of the market share.

Any agreement that falls within the ambit of the Act on Competition and Consumer Protection or article 101 or any legal action that amounts to the abuse of dominant position is void and unenforceable.

### **30 Preclusion and remedy of anticompetitive practices**

#### **What authority does the regulator (or regulators) have to preclude or remedy anticompetitive or manipulative practices?**

The President of the OCCP or the Commission may take certain actions if an undertaking has intentionally or negligently breached competition rules. If an undertaking has breached article 101 TFEU or relevant provisions of the Act on Competition and Consumer Protection, it may be fined up to 10 per cent of its worldwide group turnover and be ordered to cease the operation of an anticompetitive agreement. Any anticompetitive agreement made in contravention of Article 101 TFEU or the relevant provisions of the Act on Competition and Consumer Protection void and unenforceable. If an undertaking has breached article 102 TFEU or the relevant provisions of the Act on competition and consumer protection, it may be fined up to 10 per cent of its worldwide group turnover and be ordered to cease or modify its conduct. The Commission and the President of the OCCP may impose structural or behavioural remedies that are proportionate to the anticompetitive behaviour. The President of the OCCP may impose a fine of up to 2 million zloty on a managing person who intentionally permitted the entrepreneur to breach the prohibition of the anticompetitive agreements.

Pursuant to the Act on Competition and Consumer Protection, the President of the OCCP may impose a fine of up to 10 per cent of revenues from the previous year, if an enterprise, even unintentionally, carries out a merger or acquisition without obtaining the President's prior consent. Furthermore, if a merger is proved to have been anticompetitive, structural sanctions may also be applied. The President of the OCCP is also authorised to fine persons exercising managerial functions (up to the amount of 50 times average monthly salary that fail to notify the concentration to the President of the OCCP.

Under the Energy Law Act, the President of the ERO may impose a fine of up to 15 per cent of revenues from the previous year in case of anticompetitive practices or in case of a breach of other duties imposed by the regulator.

### **International**

#### **31 Acquisitions by foreign companies**

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

As the biggest Polish energy companies are at least partially state-owned, restrictions on acquisitions are imposed by the Act on Special Rights of the Minister of Treasury in certain companies operating in the electricity, petroleum and gas fuels industry. On its basis, the Minister of the Treasury is able to withhold the acquisition of shares in a particular company, in situations where there is a risk of a breach of national security. An electricity TSO must remain 100 per cent state-owned entity.

**32 Authorisation to construct and operate interconnectors****What authorisations are required to construct and operate interconnectors?**

The construction of interconnections will fall under the general requirements of the investment process, including an environmental decision and permits for localisation, construction and usage.

**33 Interconnector access and cross-border electricity supply****What rules apply to access to interconnectors and to cross-border electricity supply, especially interconnection issues?**

Cross-border supply is regulated under the general requirements of the electricity market set out in the Energy Law Act and the industry codes (as the Instruction on the Traffic and Operation of the Transmission Network approved by the President of the ERO). Interconnectors must provide non-discriminatory access in accordance with European legislation and the TPA rule.

**Transactions between affiliates****34 Restrictions****What restrictions exist on transactions between electricity utilities and their affiliates?**

The unbundling rule required by EU energy law, based on the separation of functioning at the legal, financial and operational level, was also codified in the Energy Law Act. The extent of such separation varies depending on the nature of the company – the regulations are different for TSO, DSO and storage system operators.

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

Under the Energy Law Act, the President of the ERO can impose financial penalties up to 15 per cent of revenues from the previous year.

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Electricity Regulation  
ISSN 1479-3210



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