

Electricity Regulation

Contributing editors

Daniel Hagan and Kirsti Massie



2017

GETTING THE
DEAL THROUGH 

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Electricity Regulation 2017

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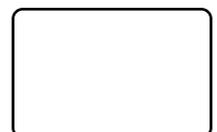


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Czech Republic

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1 Policy and law

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

The goals of the Czech Republic in the energy sector, including the preferred fuel mix, are outlined in State Energy Policy (SEP) which provides both a long-term as well as a short-term outlook on energy. The government may update the SEP from time to time.

In 2015, the Czech government approved formation of a long-awaited update of the SEP. The SEP introduces a strategy for the development of Czech energy for next 25 years. The amendment to SEP also identifies the mechanisms that ensure the national security in energy supply and especially proposes a wide diversification of resources and interest in maintaining the existing full independence in the field of heat and electricity supply exports of energy produced.

The primary legislative source is Act No. 458/2000, the Energy Act, which sets forth the rights and obligations of the entities active in the energy sector (electricity, gas and heating businesses).

Apart from the Energy Act, the renewable sources of energy and subsidy programmes are regulated in Act No. 165/2012, the Supported Renewable Sources Act. Further, numerous other acts regulate particular issues, mainly implementing EU legislation (such as energy efficiency requirements), or implementing regulations issued by the Energy Regulatory Office (ERO) (such as the pricing decisions, implementing and licensing ordinances) or the Ministry of Industry and Trade (MIT) (such as dispatching rules or rules on compensation in instances of unauthorised consumption).

The primary regulatory authority in charge of energy markets is the ERO. Its powers are described in question 23.

2 Organisation of the market

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

The Czech electricity market is composed of a single transmission system operator (TSO), distribution system operators (DSO) (including local DSOs not directly connected to the transmission system), electricity generators, the market operator, electricity traders and customers.

Conducting business (transmission, distribution, generation, market operation and trading) requires that an appropriate license be obtained from the ERO. Only one electricity transmission licence and one market operator licence is issued for the entire Czech Republic; for the rest, the number of licences that may be issued by the ERO is not limited.

Apart from the licence requirements, the TSO and the DSOs with over 90,000 connected customers must also comply with the unbundling rules. Specifically, the TSO ČEPS a.s. (CEPS) must hold a certificate of independence, issued by the ERO.

The Power Exchange Central Europe which trades certain products (such as futures, spot trades, day-ahead, intra-day) is regulated mainly by Act No. 229/1992, the Commodities Exchanges Act.

The company OTE, a.s. (OTE) serves as the market operator and, among other things, is responsible for organisation of short-term market with electricity, settlement of account imbalances, prepares and publishes a monthly and annual report on electricity market and facilitates payments of green bonuses and compensation payments to the

mandatory buyers under subsidy scheme for renewable sources, as described in question 5.

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 a generation facility typically requires obtaining (i) environmental consents (and impact assessment pursuant to Act No. 100/2001, on Environmental Impact Assessment, if necessary) (ii) zoning and construction permits pursuant to Act No. 183/2006, Building Act and (iii) state authorisation for new generation facilities exceeding 1MW of output, issued by the pursuant to the Energy Act issued by MIT.

Specific types of electricity generation facilities may require additional consents or opinions from various authorities in the above-mentioned process. The construction of a 50MW large generation facility would also typically require an integrated permit issued pursuant to Act No. 76/2002, on Integrated Pollution Prevention.

The construction of new nuclear power plant is subject to a specific permitting procedure coordinated by the National Office for Nuclear Safety.

An electricity generation licence is required for operation of the generation facility. Compliance with the licence conditions stipulated in the Energy Act and Ordinance No. 8/2016, on the Details of Awarding Licences for Business within Energy Industries, is examined by the ERO and a licence for a maximum of 25 years is issued if all conditions are met.

Effective as of 1 January 2016, the production of electricity in power generation facilities with an installed capacity of no more than 10kW is exempted from the generation licence requirement, provided the output of such facility is designated for the user's own consumption and no other power generation facility of a licence holder is connected to the point of consumption.

4 Grid connection policies

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

The grid connection policies are primarily regulated by the Energy Act, by Ordinance No. 16/2016, on Connection Conditions, and by the grid code issued by the TSO, as approved by the ERO. The TSO must provide grid connection services to anyone connected to the transmission network provided the pertinent conditions are fulfilled, unless capacity is demonstrably insufficient or unless the safe and reliable operation of the distribution or transmission grid is demonstrably jeopardised.

The mandatory contents of the application for grid connection are specified in the ordinance. The TSO may further require that a feasibility study for the grid connection be elaborated and submitted by the applicant.

Unless the grid connection cannot be approved on statutory grounds, the TSO will issue a grid connection contract or (if technical adjustments to the transmission network are required) a future grid connection contract. The applicant shall pay compensation for the costs of grid connection in the maximum amount of 50 million koruna within 15 days from the conclusion of the grid connection contract or

future grid connection contract. Failure to pay the compensation even within the additional deadline results in the termination of the grid connection contract or future grid connection contract and loss of capacity reservation.

Solar power plants are to be connected to the transmission network within 180 days from the contract conclusion or within one year if the plant output exceeds 30kW, provided that no technical adjustment of the grid is necessary.

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?

The regulation of renewable energy sources in the Czech Republic is based on EU policy and the climate change goals of the Kyoto Protocol. These goals are further specified in the SEP, pursuant to which at least 13 per cent of the gross consumption of electricity shall be produced by renewable energy sources until 2020.

Massive investments into renewable energy sources were promoted mainly by Act No. 180/2005 (the Old Supported Sources Act) which introduced a system of subsidies. This act was superseded by Act No. 165/2012, Supported Renewable Sources Act, which changed the subsidy system.

There are two main types of subsidies, namely (i) one-off investment subsidy for heating plants using renewable sources and (ii) operating subsidy. The operating subsidies are in turn of two kinds: green bonuses and the feed-in tariff. Separately, private individuals may receive a one-off investment subsidy for the installation of photovoltaic panels on a family house, which may also include an electricity storage component.

A generator who opts for green bonuses earns the amount agreed in the contract with the electricity trader for the electricity delivered and an additional green bonus from the market operator. In the case of the feed-in tariff, the generator receives the feed-in tariff from the mandatory buyer, tendered or selected by the MIT.

Green bonuses and feed-in tariffs are determined by the ERO annually in its pricing decision, respecting the conditions stipulated in the Energy Act. Specifically, the green bonus or the feed-in tariff cannot exceed 4,500 korunas/MWh for the year in which the plant was put first into operation and an annual increase by at least 2 per cent is guaranteed, except for biomass or biogas plants. Further, the subsidy must ensure that a return on investment is achieved within 15 years. Finally, the feed-in tariff for the upcoming year cannot be below 95 per cent or over 115 per cent of the promulgated feed-in tariff; this rule does not apply if the return of investment would be demonstrably shorter than 12 years.

Due to the development of a large number of solar power plants and the falling costs of technology, the Supported Renewable Sources Act introduced a special charge on solar power plants constructed between 1 January 2010 and 31 December 2010. This charge is payable from 1 January 2014 for the entire duration of subsidy. The rate amounts to 10 per cent in the case of the feed-in tariff and 11 per cent in the case of green bonuses and is calculated based on the subsidy received. The charge was introduced by the Old Supported Sources Act, and applied to solar power plants constructed between 1 January 2009 and 31 December 2010, for electricity produced between 1 January 2011 and 31 December 2013. The rates amounted to 26 per cent in the case of the feed-in tariff and 28 per cent in the case of green bonuses from the subsidy received.

Finally, the operating subsidy scheme applies only to renewable sources put into operation by 31 December 2013, unless the renewable sources had a valid construction permit or authorisation of MIT as of 2 October 2013 in which case the subsidy was granted if such source was put into operation by 31 December 2015.

Producers which are incorporated in the form of a joint-stock company may receive the subsidy only if their shares are dematerialised (ie, registered in the Central Securities Depository). If the producer is a foreign entity, an affidavit certifying the ownership structure of all shareholders owning at least 10 per cent of the share capital must be produced, including information on the source.

Owing to the amendment to the Supported Renewable Sources Act, the calculation of the fee for the promotion of renewables will be

as of 2017 based on the capacity of the circuit breaker. The change may be beneficial to energy-intensive industries. As of the date of this publication, no pricing decision of the ERO is available. In any case, the maximum fee is capped at 495 korunas/MWh for final consumers.

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 strategic goals of the Czech Republic in the energy sector and also climate change are in line with the climate and energy goals of the EU. The national climate change policy is defined by the National Programme To Abate the Impact of Climate Change in the Czech Republic (the Programme) from 2004, which sets the main national targets and measures to ensure the effective curbing of greenhouse gas emissions and to ensure sustainable development. The government is currently preparing an update to the Programme reflecting the latest developments in the energy sector; however, this update is still in progress and no data from the updated Programme are available as of the date of this publication.

Regarding the expected impact of government policy (including the field of climate change) on the types of resources that are used to meet electricity demand, the SEP generally anticipates that within the energy mix:

- the share of renewables and secondary sources will grow – primarily by energy from biomass and utilisation of waste energy;
- until 2025, the share of high-grade brown coal (major domestic energy source today) will drop substantially;
- brown coal, will to some extent be replaced by natural gas;
- the production of black coal will markedly decrease;
- the share of nuclear energy will grow (nuclear generation facilities today provide over 33 per cent of total electricity production), and may in the long term exceed 50 per cent of all electricity production, thus replacing a substantial part of coal-powered generation facilities;
- the share of natural gas will grow (in spite of a 20 per cent decline in natural gas consumption over the past 10 years); and
- the consumption of crude oil (other than for transportation purposes) will not increase.

7 Storage

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

Currently, there is no legislation explicitly promoting electricity storage directly in the Czech Republic.

Nevertheless, as electricity storage solutions cannot be effectively put into place on a mass scale without investments into smart grid projects (such as smart metering), promotion of investments into such projects by subsidies or otherwise exists and can be expected that certain support to promote electricity storage is likely to be put forward.

Recently, a rising trend in discussing the topic can be observed in the form of expert conferences and articles along with the research activities of various companies (including start-ups) and corresponding M&A activity. As noted above, private individuals may receive a one-off investment subsidy for the installation of photovoltaic panels on a family house, which may also include an electricity storage component.

8 Government policy

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

Currently, no specific instrument encouraging the development of new nuclear power plants (NPP) is in place. However, the SEP describes nuclear sources as an important part of the generation mix, as outlined in question 6.

The company ČEZ, a.s. conducted a public procurement process, tendering the contractor for the engineering, design, and construction of two new blocks in the Temelin NPP. Owing to lack of price guarantees from the government, the public procurement process was terminated in April 2014.

Discussions regarding the extension of the existing NPPs (Temelin, Dukovany) are ongoing.

Regulation of electricity utilities – transmission

9 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

Generally, the procedure described in question 3 applies in respect of the construction permitting.

Recently, a proposal to amend the Building Act was introduced by Ministry of Regional Development. The proposal introduces a coordinated proceeding that aims to merge procedures to obtain building permit, zoning decision and the decision on the environmental impact assessment into one coordinated procedure. This should effectively accelerate the overall duration of permitting procedure. The amendment should become effective during 2017.

Subject to meeting the conditions of the Energy Act, the TSO may use third-party property for the construction and maintenance of the transmission grid. If a TSO fails to reach an agreement with the owner of the property, the necessary rights for constructing or maintaining part of the transmission grid could be expropriated for compensation pursuant to the procedure under Act No. 184/2006, Act on Expropriation.

Operating a transmission network requires an electricity transmission licence issued by the ERO. Currently, only one such licence for a period of 25 years may be issued for the territory of the Czech Republic (exclusive licence). Further, the TSO must comply with the unbundling rules, which require the TSO to hold a certificate of independence issued by the ERO.

10 Eligibility to obtain transmission services

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

Access to the transmission grid is briefly described in question above. Generally, two different transmission services are provided, domestic and cross-border.

Transmission services are provided on the basis of an electricity transmission contract concluded between the TSO and electricity generators, distribution system operators or any customer.

Charges for capacity reservation and grid use are determined by the ERO in its annual pricing decision. The cross-border transmission capacities are based on the allocation available for trading in yearly, monthly and daily auctions. Specific rules apply for intraday allocations.

11 Government transmission policy

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

At the time of this publication, there is no specific tax benefit incentive for the expansion of the transmission grid. In general, according to the Energy Act, the TSO shall provide reliable operation and development of the transmission system.

The pricing mechanism described in question 12 should enable transmission grid investment in accordance with the 10 Year Network Development Plan.

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 rates and terms for transmission services for the regulatory period commencing on 1 January 2017 shall be determined by the ERO in accordance with the rules set out in the Energy Act and Ordinance No. 194/2015, on the Price Regulation and Price Control Procedures within Energy and District Heat Industries (Pricing Ordinance).

The price for transmission services is composed of fees for capacity reservation and transmission network use.

Principally, the same regulatory formula set out in the Pricing Ordinance remains in effect during the regulatory period (fixed for five consecutive years). Each year, the ERO announces certain parameters

of the formula and thus changes the fees. The ERO shall announce the parameters at the latest six months before the regulatory year commences. In exceptional cases (eg, correction of mistakes in input data), the ERO may modify the parameters in the regulatory period or regulatory year.

By 10 October, the ERO shall further announce to the TSO the calculated prices for transmission capacity reservation, transmission network use and system services.

13 Entities responsible for grid reliability

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

CEPS, as the TSO, is solely responsible for the safe, reliable and efficient operation, repairs and development of the transmission network. At the same time, the DSOs may not by their operation impair the safe operation of the transmission network (eg, when considering the applications for access to the distribution networks).

To assure the operation of the transmission system, CEPS acquires ancillary services as a means to provide the system services. CEPS acquires the ancillary services predominantly on the basis of contracts concluded on the basis of auctions. Currently, there are approximately 20 providers of ancillary services to CEPS.

Pursuant to the Energy Act and Pricing Ordinance, ERO calculates and announces the price of system services in its pricing decision. This price is then collected from the market participants and paid via regional DSOs (DSOs connected directly to the transmission network) and generators to CEPS.

Regulation of electricity utilities – distribution

14 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

Generally, the same permits are needed for the construction of the distribution network, as described in Section 3 above. Unlike the TSO, the DSOs are subject to legal unbundling unless the respective DSO serves fewer than 90,000 customers. In the case of the construction of rather small parts, simplified construction permitting procedures may be used, thus accelerating the development process.

Subject to meeting the conditions of the Energy Act, the DSOs may use third-party property for the construction and maintenance of the distribution grid. If a DSO fails to reach an agreement with the owner of the property, the necessary rights for constructing or maintaining part of the distribution grid could be expropriated for compensation pursuant to the procedure under the Act on Expropriation.

The DSOs are obliged to elaborate and comply with the national network development plan ensuring the stability and safe operation of the grid.

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?

The DSOs are required to grant access on a non-discriminatory basis to anyone requesting such access, provided that the conditions of the Energy Act are complied with. If, however, the distribution capacity is demonstrably insufficient or the safe and reliable operation of the distribution or transmission grid is at risk, the DSOs may refuse to grant such access.

Apart from the Energy Act, the access rules are regulated by Ordinance No. 16/2016, on Conditions on connection to power grid and by the grid code issued by the DSO, as approved by the ERO.

16 Government distribution network policy

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

As of the time of writing, there is no specific tax benefit incentive for the expansion of the distribution grid. In general, according to the Energy Act, the DSO shall provide reliable operation and development of the distribution system.

The pricing mechanism described in question 17 should enable distribution network investment in accordance with the 10 Year Network Development Plan. The investments are taken into account in the regulatory formula.

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?

The rates and terms for distribution services for the regulatory period commencing on 1 January 2017 shall be determined by the ERO, in accordance with the rules set out in the Energy Act and Pricing Ordinance.

Generally, the price for very high voltage and high-voltage distribution services is composed of capacity reservation and distribution network use fees. Further, the price for low-voltage distribution services is composed of capacity reservation fees based on the main circuit breaker before the electricity meter and distribution network use.

Principally, the same regulatory formula set out in the Pricing Ordinance remains in effect during the regulatory period (fixed for five consecutive years). Each year, the ERO announces certain parameters of the formula and thus changes the fees. With the exception of certain parameters, the ERO shall announce the parameters at the latest five months before the regulatory year commences.

Regulation of electricity utilities – sales of power

18 Approval to sell power

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

An electricity trading licence issued by ERO is required for the sale of power to customers. Apart from the Energy Act, Ordinance No. 8/2016, on Licensing Conditions stipulates the precise requirements. An electricity trading licence is issued for a period of five years and the Energy Act does not set a maximum number of electricity trading licences that may be issued.

19 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

The price for electricity for consumers is composed of two parts, regulated and unregulated part (wholesale price of electricity).

The regulated part is set by the ERO pursuant to the Energy Act and Pricing Ordinance and includes charges for transmission, distribution, system services, contribution for renewable energy sources, etc.

20 Rates for wholesale of power

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

The wholesale trading of power occurs mainly on the Power Exchange Central Europe and as such, no predetermined rates exist.

21 Public service obligations

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

The Energy Act defines the supplier of last resort as electricity traders who belonged to the same group of companies with the respective DSO holding the licence in the relevant territory before the unbundling procedure in the Czech Republic was completed.

Upon notification from the market operator, the supplier of last resort suppliers shall supply electricity to the customers if the former supplier terminated its activities. Such obligation persists for no longer than six months and the consumer shall pay such supply of electricity.

Further, in the state of emergency, entities active in the energy sector have various obligations, such as the generators offering unutilised generating capacities.

Regulatory authorities

22 Policy setting

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

The Czech Republic, as a member of the EU, has the obligation to abide by the Common Energy Policy of the EU. Within this policy, the regulatory framework is established by laws which are passed by the Parliament of the Czech Republic, in the vast majority of cases based on government bills. The government bills are mainly prepared by the MIT in cooperation with the Ministry of the Environment, but all government departments may influence the bill. The bill is then negotiated, commented on and fine-tuned in parliament, and subsequently voted on. If the bill passes, it becomes a law binding on authorities, individuals and corporations.

The government also issues the SEP which is binding only on the authorities; however, it may also impact the private sector through the regional development policy, which in turn affects zone planning.

The ERO is also responsible for setting the policy (by issuance of ordinances) within the framework of legislation adopted by way of the above-described process.

23 Scope of authority

What is the scope of each regulator's authority?

The parliament and the government are responsible for the determination of the policy on a general level (ie, passing laws and issuing the SEP).

Only the MIT has the power to authorise the construction of power plants with a total installed capacity of 100kW or more. During the authorisation process, the MIT assesses, among other things, the contemplated power plant's compliance with the SEP, the national plan for the use of renewable energy, the prospects of infrastructure development and the power plant's influence on the balance of supply and demand for electricity. The MIT also has the right to comment on the regional development policy and its principles, provide a binding opinion on the 10-year investment plans of the operator of the electricity transmission infrastructure and a binding opinion on the construction of the electricity transmission infrastructure and power plants with a total installed capacity of 100kW or more.

The ERO's authority spans price regulation, the development of competition in the energy industry, energy market oversight, the promotion of renewable and secondary energy resources, the support of decentralised energy generation and the protection of the rightful (legitimate) interests of regulated licensees. For example, it determines regulated components of the electricity prices, approves or sets the rules of operation of electricity transmission infrastructure and distribution networks, and the terms and conditions of the market operator, and approves the development plan of the electricity transmission network in cooperation with the MIT.

The State Energy Inspection is responsible for enforcing energy management obligations of the participants in the energy market pursuant to Act No. 406/2000, on energy economy.

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 MIT is a part of the government. The head of the MIT, the minister, is nominated by the Prime Minister and appointed by the President.

The ERO is an independent, apolitical central state authority established by law. By law, it is independent of any and all political bodies (the President, the parliament, the government), executive bodies, individuals and corporations.

An amendment to the Energy Act will become effective as of 1 August 2017. According to the amended Energy Act, the ERO will be presided over by the board of the ERO. The board of the ERO consist of five members, one of which is appointed as the chairman of the board. Members and the chairman of the board are nominated by the government on the basis of proposal from the Minister of Industry and Trade. Members will be in the office for a five-year term, and the chairman of the board shall be appointed for a maximum three-year term.

The ERO is funded collectively by the energy market participants, which makes it less dependent on the state budget and political pressure.

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 binding on individual entities issued by the above authorities may be challenged by an appeal to the very authority that issued them; the process is governed by Act No. 500/2004, the Administrative Code. If the appeal is not successful, the appellant may file an administrative action with an administrative court. A full-court review principle allows courts to fully review a decision handed down by the relevant authority. Further, the court's decision may be appealed to the Supreme Administrative Court on points of law; however an appeal on points of law does not suspend the legal effects of the previous decisions.

The ERO also decides on commercial disputes between two or more businesses participating in the energy market and disputes between businesses in the energy industry and consumers. There are also ordinary remedies available against ERO decisions in these matters. Moreover, the matter, even if finally decided by the ERO, may be submitted to a civil court. The matter is then reviewed by the courts which have civil jurisdiction (ordinary appeal and an extraordinary appeal on points of law are available).

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?

The Office for the Protection of Competition (OPC) is exclusively competent to decide on all competition matters in the Czech Republic, including acquisitions. The OPC cooperates with other regulators which may provide insight into the industries they regulate. In this case, the OPC closely cooperates with the ERO in order to assess the impacts of transactions between competitors on the energy markets. In addition, since the Czech Republic is a member state of the EU, the European Commission, rather than the OPC, is competent to decide on mergers if the relevant thresholds are exceeded.

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?

Under Czech law, a concentration is subject to OPC approval if the combined aggregate net turnover generated by all participating undertakings in the Czech Republic is more than 1.5 billion korunas, and the aggregate net turnover generated in the Czech Republic by each of at least two of the undertakings is more than 250 million korunas. A concentration that does not exceed these thresholds is nevertheless subject to approval if both the aggregate net turnover of the target generated in the Czech Republic is more than 1.5 billion korunas and the worldwide aggregate net turnover of another participating undertaking is more than 1.5 billion korunas.

The Czech Competition Act does not provide for any deadlines within which a notification shall be made; however, without the OPC's approval, the concentration in question may not be implemented, that is, no rights or powers arising from a non-notified concentration may be exercised until approval is granted.

The application, which is subject to a 100,000 koruna fee, must be submitted in Czech and must contain, among others, the reasoning behind the concentration and, in particular, relevant arguments justifying the conclusion that the intended concentration would not significantly impede competition in the Czech Republic; and modifications or commitments aimed at preserving effective competition in the relevant market in the Czech Republic, if proposed by any of the undertakings concerned.

If the OPC concludes that the notified concentration does not require its approval, it shall issue that finding by means of a decision within 30 days of the commencement of the proceedings. Similarly, if the OPC finds that the notified concentration, although requiring its approval, is not capable of significantly impeding competition in the Czech Republic, it shall approve the concentration within the same period.

If, within 30 days of the commencement of the proceedings, the OPC does not render its decision or inform the applicant that a more thorough review of the transaction is required, the notified concentration is deemed to have been approved upon the expiration of the last day of such period. The OPC may require that the applicant submit further evidence related to the concentration, in which case the 30 days period is suspended until the applicant has complied with such request.

Similar to the proceedings before the Commission described above, the Czech Competition Act also provides for a simplified procedure in cases that do not give rise to serious competition concerns. This typically applies to conglomerate mergers (ie, concentrations of undertakings that are active in different markets and whose activities only slightly overlap). In the simplified procedure, the notifying party submits a simplified application, which requires much less information in comparison to the regular questionnaire. Moreover, the period of 30 days described above is reduced to 20 days.

28 Prevention and prosecution of anticompetitive practices

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

It is one of the ERO's obligations to analyse competition on the energy market. However, the ERO itself is only authorised to prosecute anti-competitive or manipulative practices directed against consumers, and cases of violation of price regulation. All other cases of anti-competitive behaviour (ie, anticompetitive practices damaging other competitors) are prosecuted by the OPC. The European Commission prosecutes cases damaging or distorting the EU internal market.

29 Determination of anticompetitive conduct

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

Behaviour considered to be anticompetitive conduct damaging consumers is defined in Directive 2005/29/EC concerning unfair business-to-consumer commercial practices and in Czech Act No. 634/1992, Protection of Consumers Act, and may consist of aggressive or misleading commercial practices towards consumers. The ERO is responsible for prosecuting and preventing such practices.

Pursuant to articles 101 and 102 of the Treaty on the Functioning of the EU, other cases of anticompetitive behaviour include behaviour whose purpose or effect is the distortion, prevention or restriction of competition. Such behaviour may take the form of agreements between competitors, decisions adopted by an association of competitors, simple concerted business conduct or abuse of dominant position. Czech laws define anticompetitive behaviour in a similar, yet more detailed manner.

30 Preclusion and remedy of anticompetitive practices

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

The relevant authorities may in all cases impose fines on the perpetrators of anticompetitive behaviour. Agreements or concerted business conduct which are in violation of the principles or goals of competition are invalid by law.

In terms of mergers (concentration of competitors) under Czech law, a concentration may not be implemented prior to the effectiveness of OPC approval. Until such approval has been granted, the relevant concentration is virtually ineffective in the sense that the acquiring undertaking may not effectively exercise control (voting rights, etc) over the acquired undertaking. However, the failure to refrain from carrying out an unapproved concentration does not render the transfer of the controlling shareholding invalid (void).

Update and trends

During recent years, regulated entities have had to accommodate new requirements of EU regulations and directives (such as the Third Energy Package, REMIT, Energy Efficiency). Combined with the declining price of electricity, this led to significant changes in the industry and further motivated the traditional energy companies to re-evaluate their business models. Decentralised power generation units (incl. those using new energy sources, such as landfill gas or biomass) and new sources of revenues (such as services helping consumers to achieve energy efficiency, development of smart applications and metering, as well as providing financing, insurance and consulting services to consumers) are just a few examples of this trend. Upcoming changes in management of ERO may foreshadow a different approach of ERO towards market regulation. The current set-up where the chairman of ERO is nominated by the Czech president may not fully meet EU requirements on independence, impartiality and transparency of the national regulatory authority as strong and

extensive powers are concentrated solely with chairman of ERO. This situation is also unique, since most EU member states already have the requirement on pluralistic decision of the national regulatory authority transposed into their respective laws. This will change in 2017 when the newly established board of the ERO will be nominated as a collective body by the Czech government.

Lastly, a topic of new tariff mechanism determining, among others, consumer's contribution to renewable sources support is currently being discussed. Statutory framework for the change was adopted by amendment to Supported Renewable Sources Act. Contribution will be based on the nominal current of the main circuit breaker before the electrometer, as opposed to actual consumption based on which the contribution is determined now. Nevertheless, it is envisaged that the end consumers would not in any case pay a higher contribution in comparison with the current regime.

In addition, if the OPC finds that the undertakings have implemented the concentration without due notification, it may impose on them the duty to (i) sell the shares or interests in the acquired undertaking; (ii) transfer the acquired enterprise or a part thereof; or (iii) rescind the underlying agreement. The OPC may further impose on the infringing undertakings monetary sanctions up to the amount of 10 million koruna or up to 10 per cent of the infringing undertaking's turnover for the previous year. The latter sanctions may be imposed repeatedly.

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 a result of unbundling rules, acquiring an interest in certain entities active in the energy sector may also be subject to additional approvals and independence certification procedures for entities active in the energy sector. These limitations would apply to domestic and international buyers.

Further, the Czech Republic wishes to retain full ownership of certain entities, such as OTE and CEPS, and majority ownership of ČEZ, a.s., thus limiting the possibility of acquiring shares or control in these entities.

32 Authorisation to construct and operate interconnectors

What authorisations are required to construct and operate interconnectors?

No special rules on constructing and operating interconnectors have been adopted in the Czech Republic so far. General provisions on the construction of electricity network are applicable in this area. Note that

the EU set the target of achieving interconnection of at least 10 per cent of installed electricity production capacity for all member states. The Czech Republic achieved a 17 per cent interconnection level in 2014 (Source: ENTSO-E, Scenario Outlook and Adequacy Forecast 2014).

33 Interconnector access and cross-border electricity supply

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

The interconnection issues are primarily regulated by the Energy Act, by Ordinance No. 16/2016, On Connection Conditions, and by the grid code issued by the TSO, as approved by ERO. The TSO must provide interconnection services to anyone connected to the transmission network provided the pertinent conditions are fulfilled, unless capacity is demonstrably insufficient or unless the safe and reliable operation of the distribution or transmission grid is demonstrably jeopardised.

Cross-border transmission services (yearly, monthly and days ahead allocations) are provided on the basis of auctions organised by the Central Allocation Office GmbH under its rules.

Since 2012, the CZ-SK-HU Market Coupling (market coupling of Czech, Slovak and Hungarian day-ahead electricity markets) has been in operation.

Further, EC Regulation 714/2009 sets forth the conditions for access to the network for cross-border exchanges in electricity. Obligations under the regulation are further specified in network codes (NC) developed by the European Network of Transmission System Operators for Electricity issued in the form of EU regulations. An important NC with respect to interconnectors is EU Regulation 2015/1222, establishing a guideline on capacity allocation and congestion management.

EU Regulation 347/2013 on guidelines for trans-European energy infrastructure (PCI Regulation) introduced projects of common interest (PCI). Subject to determination by the EU Commission, certain

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infrastructure projects relevant to overall infrastructure capacity and security of supply may be awarded the PCI status. PCI Regulation aims to facilitate the timely implementation of PCI projects by streamlining, coordinating and accelerating permit granting processes and by enhancing public participation. In the Czech Republic, this is currently achieved by means of coordinated scheme envisaged by the PCI Regulation, where individual permitting proceedings and relevant deadlines are supervised by the MIT. Currently, six construction projects of 400kV lines within the Czech Republic are considered as PCIs. Once the proposed amendment to the Building Act and relevant laws are effective, the coordinated proceedings under PCI Regulation will be reflected in Czech legislation and the permitting procedure of PCIs will be subject to coordinated proceeding (with an environmental impact assessment, if required) under the Building Act.

Transactions between affiliates

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

Pursuant to Act No. 90/2012, Business Corporations Act, transactions between related entities are generally no longer strictly regulated from the corporate point of view.

The only exception applies to joint stock companies acquiring property whose value exceeds 10 per cent of its registered capital from their founder or shareholder within two years from their establishment. Such transactions must be approved by the general meeting of shareholders and the consideration may not exceed the property value, as determined by the appraiser; these conditions do not apply if the transaction is conducted within the ordinary course of business, under the supervision of a regulatory authority or on the regulated market.

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

If the aforementioned formal restrictions are not fulfilled, the company's shareholders are entitled to claim the invalidity of the respective transaction in civil courts. Moreover, the failure to comply with certain formal restrictions represents a breach of the obligation to act with due managerial care by the members of the statutory body of the company, resulting in potential claims of damage incurred by the company. Such damage can be claimed by the company itself or, in cases determined by law, the company's creditors.

The sanctions for non-compliance are of a private law character and may include the invalidity of the transaction and reimbursement of damage.

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