



Electricity Regulation

in 28 jurisdictions worldwide

2012

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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

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Switzerland

Marc Bernheim and Gaudenz Geiger

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1 Policy and law

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

Pursuant to article 89 of the federal Constitution, both the confederation and the cantons must ensure a sufficient, diverse, safe, economic and environmentally sustainable energy supply as well as the economic and efficient use of energy.

Legislative power in the fields of the general principles of the use of domestic and renewable energy, nuclear energy, hydropower generation and the transmission and distribution of electricity lies with the confederation. In the other fields, it lies with the legislative bodies of the cantons. The legislative framework is thus very fragmented. The relevant acts and ordinances at the federal level are the following:

- Energy Act;
- Ordinance on Energy;
- Electricity Supply Act ;
- Ordinance on Electricity Supply;
- Act on Nuclear Energy;
- Ordinance on Nuclear Energy;
- Act on Low and Heavy Current Electricity Utilities;
- Ordinance on Low Current Electricity Utilities;
- Ordinance on Heavy Current Electricity Utilities;
- Ordinance on the Authorisation Procedure for Heavy Current Utilities;
- Ordinance on Electric Low Current Products;
- Ordinance on Electric Low Current Installations;
- Ordinance on Electric Lines;
- Act on Utilisation of Water Power; and
- Act on CO₂ Emission Reductions.

The legislative framework for the electricity sector has undergone substantial changes during the last few years. The Federal Act on Electricity supply came mainly into force on 1 January 2008, while the Federal Ordinance on Electricity supply came into force on 1 April 2008, thereby regulating the previously closed electricity market.

This new legal framework is to ensure reliable and sustainable electricity supply and it provides for the opening and liberalisation of the market in two steps. In the first stage, end consumers with an annual consumption of more than 100MWh have been granted free access to the market from 1 January 2009. In the second stage, all end consumers, including households and other small-scale consumers, will be able to freely choose their electricity supplier. Full market liberalisation will be introduced on the basis of a federal resolution, which will be subject to an optional referendum. The relevant provisions of the Act have been scheduled to enter into force on 1 January 2014. However, the start of the second stage might be delayed due to the current work being done on a revision of the Act (see 'Update and trends').

2 Organisation of the market

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

Switzerland's electricity supply continues to be very fragmented and is secured by approximately 650 energy supply utilities. However, since the new legislative framework for electricity supply provides for extensive regulatory efforts to be fulfilled by producers and distributors of electricity, the number of companies active in these markets is likely to decrease in the coming years. Many of the energy supply companies are not only responsible for the supply of electricity, but also for supplying water and gas. In some cantons and towns, a single vertically integrated company is responsible for the entire supply chain (without transmission of electricity, which is operated by the transmission system operator (TSO)), while in other cantons a variety of companies share this responsibility.

As of 2010, approximately 85 per cent of the electricity supply company capital totalling around 5.1 billion Swiss francs is held by the public sector, while the remaining 15 per cent is held by private companies (7.7 per cent Swiss investors; 7.3 per cent foreign investors).

In 2010, end consumer electricity consumption totalled 59.8 billion kWh, and domestic producers generated a total of 66.3 billion kWh. Cross-border electricity trading is of major significance for Switzerland, both economically and in terms of supply security. In 2010, 66.8 billion kWh were imported and 66.3 billion kWh were exported. The electricity trading balance for 2010 was around 1.3 billion Swiss francs.

At present, hydropower plants account for around 55 per cent of domestic production of electricity, followed by nuclear power plants (40 per cent) and conventional thermal energy and renewable energy plants (approximately 5 per cent).

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 Act on Low and Heavy Current Electricity Utilities and related Ordinances provides the legal framework for the procedure to get permission for the construction and operation of generation facilities. The construction of generation facilities requires – like all heavy current electricity installations – an approval of the federal inspectorate for heavy current installations (planning permission). This planning permission includes all permissions for the construction and operation of a generation facility required by federal law. Furthermore, all cantons concerned have to be informed by the federal authority about the request for planning permission and the request must be published in the Official Gazette of the cantons and municipalities concerned.

In the event of objections against the issue of a planning permission that cannot be solved by the Inspectorate for Heavy Current Installations, or in the event of diverging views among the federal authorities involved, the federal office of energy becomes competent for the approval of the planning permission.

The operation of hydropower plants requires a concession for the utilisation of water power. The power to grant such a concession typically lies with the canton concerned.

The construction of nuclear power plants requires the prior approval of the federal council and Parliament. Further, the Act on Nuclear Energy stipulates that the approval of a general licence for new nuclear energy installations by the federal council and the federal assembly is subject to an optional referendum. There has, for a long time, been strong political opposition to the construction of new nuclear power plants, but in 2008 three requests for approval to construct new nuclear power plants were filed. In March 2011, after the incident in Fukushima, the process to approve these requests has been suspended. In May 2011 the federal council made the decision on phasing out nuclear energy and, therefore, not building any new nuclear power facilities. The federal council's decision was approved by the Parliament in June and September 2011.

4 Interconnection policies

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

According to the Electricity Supply Act, grid operators are obliged to allow the interconnection of generation with the transmission and distribution grid. Network operators are obliged to grant (regulated) third parties access to the network without discrimination, but access to the network may be denied if the network operator is able to demonstrate that the operation of the network would be endangered or that no free capacities are available. With regard to the allocation of network capacities, generators of electricity from renewable energy sources, especially hydropower, have preferential rights.

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?

Historically, Switzerland's longest serving and most important source of renewable energy has been hydropower. But the 'new' renewables, including solar, wood, biomass, wind, geothermal and ambient heat, also play an increasingly important role in today's Swiss energy mix.

The government's policy is pursuing clearly defined objectives for the saving of energy and increasing the use of renewable energies. The revised Energy Act stipulates increased production of electricity from renewable energy sources by at least 5,400GWh by 2030 and contains a package of measures for promoting renewable energy and efficient electricity use. The most significant measure concerns cost-covering remuneration for the input into the electricity network produced from renewable energy sources. The Energy Ordinance provides for cost-covering remuneration that apply to the following technologies: hydropower (up to 10MW), photovoltaics, wind energy, geothermal energy, biomass and waste material from biomass. The tariffs for remuneration for electricity from renewable energy sources (green power) have been specified on the basis of reference facilities for each technology and output category. Remuneration will be applicable for a period of between 20 and 25 years, depending on the technology. The sum of around 250 million Swiss francs per annum will be available to compensate the difference between remuneration and market price (rising to 500 million Swiss francs as of 2013).

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 Act on CO₂ Emission Reductions entered into effect on 1 May 2000 forming the central pillar of Swiss climate policy. Its objective was to reduce the emission of climate-relevant carbon dioxide (CO₂) arising from the combustion of fossil fuels against the 1990 level by 10 per cent (15 per cent on combustibles, 8 per cent on fuel) by 2010. The targeted reduction of CO₂ emissions was primarily to be achieved through voluntary measures on the part of companies and private individuals. However, as of 2008, a steering fee on fossil combustibles (not fuels) (CO₂ fee) was introduced in order to meet the declared CO₂ reduction target.

As the Act on CO₂ Emission Reductions regulates measures until 2012 only, it must undergo a revision to cover the period from 2013. Thus, the federal council submitted proposals to parliament for the revision on the goals for the reduction of greenhouse gases from 2013. These goals will enable Switzerland to continue to reduce its output of climate-harming greenhouse gases and thus fulfil its international obligations specified, for example, in Switzerland's commitments towards the Kyoto Protocol. The federal council proposes to reduce greenhouse gas emissions by at least 20 per cent in comparison with emission levels in 1990 by 2020. The measures planned to achieve this goal include the continuation of the CO₂ incentive tax on combustibles (CO₂ fee) at 36 Swiss francs per tonne of CO₂ (can be increased up to 120 Swiss francs per tonne), subsidies to fund CO₂-effective measures in buildings, the possibility of introducing a CO₂ incentive tax on motor fuels (if required), the introduction of a duty for manufacturers and importers of fossil motor fuels to compensate for the emissions caused and the continuation and improvement of the existing emissions trading scheme.

Today, the proposal of the federal council for the revision of the Act on CO₂ Emission Reduction is subject to ongoing discussions in Parliament.

7 Government policy

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

Since the incident in Fukushima, the government's policy is to discourage the development of new nuclear power plants. In May 2011 the federal council announced the nuclear phaseout that resulted in ongoing plans to build new nuclear facilities having been halted. The federal council's announcement was approved by the Parliament in June and September 2011.

Regulation of electricity utilities – transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

The construction of a transmission network is subject to the same authorisation procedures as the construction of a generation facility (see question 3).

The Electricity Supply Act provides that the transmission network is operated by the national TSO (Swissgrid), which is a joint-stock company under private law, domiciled in Switzerland. The TSO is the owner of the transmission network it operates. The TSO ensures that the majority of its capital and associated voting rights is held directly or indirectly by the cantons and municipalities, and the shares of the TSO cannot be listed on a stock exchange.

9 Eligibility to obtain transmission services

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

The Electricity Supply Act entitles everyone (consumers and producers, but there are only a few consumers, such as Swiss Federal Railways and CERN who are connected to the transmission grid) to a grid connection based on regulated third party access.

Responsibility for the management of the high voltage grid lies with swissgrid and it has to guarantee access on the basis of objective, transparent and non-discriminatory criteria (see question 4).

10 Government incentives

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

To ensure the security of the electricity supply in the coming decades, the transmission grid must be expanded and upgraded over the next 10 years. Around 40 expansion projects have so far been identified and more will be added. According to the national TSO, the investment required for this upgrading will be around 4.5 billion Swiss francs; expanding the grid is expected to require another 1.5 billion Swiss francs.

The upgrading and expansion of the transmission grid must be financed by the regulated network use tariff. By adjusting this tariff, especially by adjusting the weighted average cost of capital (WACC) (the competence to do so lies with the federal department of the environment, transport, energy and communication), the regulator can provide the incentive for Swissgrid to increase or decrease its investments in the expansion of the transmission grid. Furthermore, the regulator has the power to oblige Swissgrid to use certain revenues for the expansion of the transmission grid only.

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 tariff to use the transmission grid is set by Swissgrid and subject to several provisions of the Electricity Supply Act and the revision of the regulator. The Electricity Supply Act provides that the remuneration for using the grid (transmission and distribution) shall not exceed the recoverable costs and fees and royalties. The recoverable costs are defined as the operating and capital costs that are required for the secure, productive and efficient operation of the grid and include a reasonable operating profit. The regulator is responsible for the official examination of network use tariffs and remuneration. It may order reductions or prohibit increases of such tariffs and remunerations.

The tariffs for transmission services are subject to extensive scrutiny by the regulator who lowered them in 2009, 2010, 2011 and 2012. However, as of today, all these interventions are still subject to litigation.

12 Entities responsible for assuring reliability

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

The objectives of the Electricity Supply Act are a secure and sustainable supply of energy and the creation of a competition-based electricity market. Conditional to achieving those goals is the reliability of the transmission grid. Responsibility for the reliability of the transmission grid lies with Swissgrid. The Electricity Supply Act held that Swissgrid must permanently ensure the non-discriminatory, reliable and efficient operation of the transmission network as a substantial basis for the secure supply of electricity.

In order to do so, Swissgrid is entitled and obliged to operate and supervise the nationwide transmission network and manage it as one control zone. The planning and control of the entire transmission network is the responsibility of Swissgrid. Furthermore, Swissgrid is responsible for the balance management and provision of all system services for the transmission grid, including a reserve power supply. In addition, Swissgrid defines the procedures for dealing with shortfalls, cooperates with TSOs from abroad and implements all necessary measures in the event that the stable operation of the network is endangered.

Regulation of electricity utilities – distribution**13 Authorisation to construct and operate distribution networks**

What authorisations are required to construct and operate distribution networks?

The construction of a distribution network is subject to the same authorisation procedures as the construction of a generation facility (see question 3).

Further, the cantons are responsible for designating the zones in their sovereign territory in which network operators are active; the designated network operator is obliged to connect all end users and electricity generators within its designated network zones to the 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?

The Electricity Supply Act provides for an opening of the market in two stages. In the first five years (2009 to 2013), end users with an annual consumption of more than 100MWh have access to the market. After this period, households and other small-scale consumers will be able to freely choose their electricity supplier. Full market liberalisation will be introduced on the basis of a federal resolution, that will be subject to an optional referendum (see 'Update and trends'). However, due to a combination of jurisprudence, international electricity market price developments, special interest politics and legal provisions to protect end consumers, there are hardly any end consumers who entered the market in the first stage of the market opening. Today, only 4 per cent of the total of consumed electricity is consumed by end consumers who participate in the market.

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?

Network operators are obliged to grant third parties access to the network without discrimination. The tariffs for the use of the distribution grid are set by the network operators and are subject to several provisions of the Electricity Supply Act and the revision of the regulator. The Electricity Supply Act provides that the remuneration for using the distribution grid shall not exceed the recoverable costs and fees and royalties (see question 11). The regulator is responsible for the official examination of network use tariffs and remuneration (ex post). It may order reductions or prohibit increases of the tariffs and remunerations. In addition, the Electricity Supply Act provides that the tariffs must have a simple structure and reflect the costs incurred by end users, that the tariffs must be independent of the distance between power injection and power consumption and that the tariffs must be uniform per voltage level and client group within each network.

Beginning with the tariffs for distribution services in 2009, these tariffs are subject to extensive scrutiny by the regulator. However, as of today, most of these proceedings are still pending.

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?

No specific government or administrative authorisation is required for the sale of power to customers.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

End consumers who do not participate in the market (see question 14) are entitled to receive electricity ‘at the desired quality’ and ‘at a reasonable price’. The Ordinance on Electricity Supply specifies the term ‘reasonable price’ by stating that the tariff proportion for energy delivery to end consumers who are not part of the market is based on the acquisition costs for efficient production and on long-term purchase agreements with the distribution network operator. If the acquisition costs exceed the market prices, the tariff proportion shall be based on the latter. Thus, end consumers who do not enter the market in the first stage of the liberalisation will profit from the lowest possible tariffs without any effort on their part. These tariffs are subject to an ex post monitoring by the regulator.

No tariffs or other regulations exist regarding prices for electricity for consumers who participate on the market. However, excessive or discriminatory electricity tariffs may infringe the Competition Act and the Federal Act on the Supervision of Prices.

18 Rates for wholesale of power

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

No specific rates for wholesale power exist. However, electricity buyers, who are not end consumers but sell the electricity to third parties, automatically participate on the market (see question 17). The rates for wholesale power to such customers are therefore subject to the Competition Act and the Federal Act on Supervision of Prices only.

19 Public service obligations

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

The Electricity Supply Act provides an obligation to distribution network operators (who are usually vertically integrated companies also selling electricity) to ensure that end consumers who do not participate on the market receive the requested amount of energy (see question 17). However, there may be additional public service obligations in cantonal energy laws.

Regulatory authorities

20 Policy setting

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

The regulator (federal electricity commission, ElCom), the federal office of energy and the federal inspectorate for heavy current installations are the federal authorities in charge of the electricity sector. The general policy is set forth by the federal council. Cantons have the competence to designate authorities to supervise the application of their own regulations in this field.

21 Scope of authority

What is the scope of each regulator’s authority?

ElCom (the regulator) is responsible for the application of the Electricity Supply Act and the Ordinance on Electricity Supply and thus responsible for securing the smooth transition from a monopoly situation in the electricity supply sector to an electricity market based on the principles of competition. ElCom has to ensure that the liberalisation of the market does not result in excessive tariff increases – a duty it took over from the office of the price supervisor on 1 January 2008. ElCom also has to ensure that the network infrastructure is properly maintained and expanded as necessary in order to guarantee an adequate supply of electricity. ElCom has been entrusted with extensive judicial powers so that it can effectively perform its various duties. It monitors compliance with the provisions of the Electricity Supply Act and the Energy Act, and can pronounce legally binding decisions and rulings as necessary.

The federal office of energy (SFOE) is the office responsible for formulation of energy policy and for all questions relating to energy supply and energy use within the federal department of the environment, transport, energy and communication (DETEC). The SFOE is particularly responsible for the preparation of enactments and for their implementation, as well as for authorisations of certain installations.

The federal inspectorate for heavy current energy is the body controlling and approving installations with high tension (greater than 1,000V) and installations with low tension (see question 3).

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?

ElCom comprises seven independent members appointed by the federal council, plus two independent secretariats. It is not subject to any directives of the federal council, and acts independently of the federal administration and the regulated business.

The federal office of energy is part of the federal department of environment, transport, energy and communications. As such, it is independent from the regulated business, but a branch of the federal government.

The federal inspectorate for heavy current installations is a separate division of Electrosuisse SEV Association for Electrical Engineering, Power and Information Technologies operating on behalf of the government. Electrosuisse is a private association bringing together companies active in the electricity industry.

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?

Decisions of the regulator (ElCom), the federal office of energy and the federal inspectorate for heavy current installations can be appealed to the federal administrative tribunal. The Federal Act on Administrative Proceedings and the Federal Law regarding the Administrative Tribunal provide the legal framework for such appeals. Decisions of the federal administrative tribunal may be challenged to the federal supreme court.

Update and trends

Revision of the Federal Electricity Supply Act

Practical experience shows that the main goal of market liberalisation, namely, the creation of a competitive and secure electricity supply with transparent pricing, has not been achieved so far. A lack of market transparency, non-competitive behaviour by the involved players and the continued threat of sharply rising electricity tariffs indicate that a thorough analysis of the applicable legislation is called for. As the relevant authority, the federal office of energy will prepare the necessary legal and technical bases in co-operation with other involved federal authorities and interest groups. The aim was for the revised Electricity Supply Act to enter into force in 2014 to coincide with the second stage of market liberalisation, at which time private households will be able to freely choose their electricity supply. Meanwhile, this date has been rescheduled to 2015. Whether or not the second stage of market liberalisation will also be postponed to 2015 is still subject to political discussions.

Bilateral agreement

In the wake of the blackout in Italy in September 2003, the European Commission put forward a proposal to Switzerland for the contractual regulation of electricity transit. The main concern for both sides is to secure supply in the deregulated market environment. To this end, within the frame of the negotiations initiated at the end of 2007, network access for cross-border electricity is to be regulated and security standards for electricity network harmonised. In the autumn of 2010, the federal council enlarged the scope of Switzerland's negotiating mandate. The mandate now takes into consideration

the latest developments in EU legislation, such as the Third Energy Package and, in the long term, targets a comprehensive energy agreement with the EU. Today, the negotiations between the EU and Switzerland are still ongoing.

Unbundling the transmission network

Unbundling the transmission network is one key criterion in the liberalisation of the electricity market. This concerns the network of high-voltage transmission lines for transporting electricity over great distances (380 and 220 kV). The aim here is that ownership and operation of this network (a monopoly) are to be separated from other business activities such as electricity production and trading (the market). The Electricity Supply Act provides for a three-stage process to transfer the transmission grid from the vertically integrated electricity supply companies to an unbundled and independent TSO (Swissgrid). As a first step, the Electricity Supply Act provides for a separation of the accounts of the network owner and operator from other activities. This step is already implemented. As a second stage, a legal separation of the transmission grid and operation from the other activities is required. This step was implemented as of 1 January 2009. As a third step, the ownership on the transmission grid has to be transferred to Swissgrid by 1 January 2013. Huge efforts are being made at the moment to achieve this goal. However, various legal uncertainties such as the identification of the components of the transmission grid, the financing of the transaction and the competences of the involved parties have to be dealt with first.

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 federal Competition Commission (ComCo) is responsible for the application of the Competition Law merger control. ComCo consists of 12 members who are elected by the federal council. The presidency consists of three members. The Federal Act on Cartels demands that the majority of the members of ComCo are independent experts – usually law and economics professors. Deputies of business associations and consumer organisations take the other seats. This composition is to ensure the priority of objective criteria when electing the commission members as well as the acquisition of sufficient know-how to take objective decisions.

All of the activities of ComCo are subject to the provisions of the Federal Act on Administrative Procedure as long as the Federal Act on Cartels does not deviate from it. Whenever a procedure results in competition observed to being hindered in an unlawful way through concerted practice, abuse of dominant position or merger, ComCo enacts directly against the initiator. Appeals against the decisions may be addressed to the federal Administrative Tribunal. Appeals against the decisions of the federal Administrative Tribunal have to be addressed to the federal Supreme Court.

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?

ComCo must be notified of concentrations of undertakings before they are carried out when, in the last accounting period prior to the concentration:

- the undertakings concerned reported a joint turnover of at least 2 billion Swiss francs or a turnover in Switzerland of at least 500 million Swiss francs, and

- at least two of the undertakings concerned reported individual turnover in Switzerland of at least 100 million Swiss francs.

Notwithstanding the thresholds mentioned above, notification is mandatory when, on termination of a procedure initiated pursuant to the Federal Act on Cartels, a legally enforceable decision establishes that a participating undertaking occupies a dominant position in a market, and when the concentration concerns either that market or an adjacent market or a market up or downstream.

ComCo clears a notified concentration if:

- the concentration does not create or strengthen a dominant position liable to eliminate effective competition, or
- the concentration does lead to a strengthening of competition in another market that outweighs the harmful effects of the dominant position.

Similar to EU merger control, Swiss merger control procedure is divided into two phases. In Phase 1, ComCo is obliged to advise the notifying undertakings within 30 days from the notification whether it intends to initiate an in-depth review of the concentration. If no decision is issued within the statutory period, the undertakings concerned are allowed to close the transaction. In Phase I, ComCo assesses whether there are indications of a dominant position being created or strengthened as a result of the concentration. Third parties are excluded from the Phase 1 procedure that allows a fast and discrete assessment of the intended concentration.

If ComCo reveals indications that a dominant position is being created or strengthened as a result of the Phase 1 assessment, an in-depth examination has to be concluded within a period of four months (Phase II). The decision to open Phase II proceedings, as well as the final decision of ComCo (to block or authorise a merger) will be published; further, ComCo publishes the principal terms of the merger and gives third parties the right to state their position with respect to the proposed transaction. Phase II terminates by communication of ComCo that the concentration does not have any significant adverse effect on effective competition and the transaction can be closed; by the notification of a decision of ComCo approving the concentration, subject to changes, conditions or both; or by notification of a decision of ComCo prohibiting the concentration.

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?

ComCo is responsible for the application of the Competition Act (see question 24).

27 Determination of anti-competitive conduct

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

Similar to EU Competition Law, Swiss Competition Law covers two prohibition rules set out in the Federal Act on Cartels.

First, agreements or concerted practices between two or more undertakings that significantly affect competition in the market for certain goods or services that are not justified on grounds of economic efficiency and all agreements or concerted practices that lead to the suppression of effective competition are unlawful. This provision covers a wide variety of behaviour. With regard to the horizontal agreements, the law assumes agreements or concerted practices to eliminate effective competition (horizontal hard-core restrictions) that:

- directly or indirectly fix prices; or
- restrict the quantities of goods or services to be produced, bought or supplied; or
- allocate markets geographically or according to trading partners.

The elimination of effective competition is also assumed in the case of agreements or concerted practices between undertakings at different levels in the market regarding fixed or minimum prices as well as in the case of agreements in distribution contracts regarding the allocation of territories, insofar as sales by other distributors into these territories are not permitted (vertical hard-core restrictions). These presumptions may be rebutted if it can be shown that, as a matter of fact, effective competition is not eliminated by these agreements or concerted practices.

Second, undertakings in a dominant position may not abuse that position. Practices of undertakings having a dominant position are deemed unlawful when such undertakings, through the abuse of their position, prevent other undertakings from entering or competing in the market or when they adversely affect trading partners.

Today, ComCo is undertaking an inquiry of the electricity market with regard to potentially anti-competitive behaviour of electricity supply companies.

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?

ComCo can prohibit agreements and concerted or unilateral practices which are incompatible with the Federal Act on Cartels. Undertakings that participate in hard-core restrictions and undertakings abusing a dominant position can be fined by ComCo. The fine is capped at 10 per cent of the infringing undertaking's turnover in the previous three business years.

International**29 Acquisitions by foreign companies**

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

On the federal level, there is only one restriction for foreign investors. The Electricity Supply Act provides that Swissgrid must ensure that the majority of its capital and associated voting rights are held directly or indirectly by the cantons and municipalities. Thus, it is not possible for a foreign investor to become a majority shareholder of Swissgrid. However, they are allowed to become a minority shareholder. No other specific requirements or limitations on acquisitions in the electricity sector by foreign companies apply.

30 Cross-border electricity supply

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

The Electricity Supply Act provides regulation for cross-border electricity supply. The remuneration for cross-border utilisation of the transmission grid is based on the costs incurred through the actual utilisation thereof and the capital costs, including long run average incremental costs. These costs must be calculated separately and cannot be charged to domestic end consumers. In the event that demand for cross-border transmission capacity exceeds the available supply, swissgrid distributes the available capacities on the basis of standard market procedures such as auctions.

The TSOs in the central west Europe region and central south-east region have agreed that future auctions will be conducted centrally via CASC.EU, which was set up in 2008. CASC stands for Capacity Allocation Service Company and is a private limited company according to Luxembourg law.

STAIGER, SCHWALD & PARTNER

ATTORNEYS-AT-LAW

Marc Bernheim
Gaudenz Geiger

marc.bernheim@ssplaw.ch
gaudenz.geiger@ssplaw.ch

Genferstrasse 24
CH 8002 Zurich
Switzerland
Tel: +41 58 387 8000
Fax: +41 58 387 8099
www.ssplaw.ch

Heuberg 7
CH 4001 Basle
Switzerland
Tel: +41 58 387 9500
Fax: +41 58 387 9599

Thunstrasse 7
CH 3005 Berne
Switzerland
Tel: +41 58 387 8800
Fax: +41 58 387 8899

The company provides services in relation to cross-border congestion management for transmission system operators and functions as an auction office for annual, monthly, daily and intra-day procedures. The Swiss TSO, Swissgrid, has been a shareholder in CASC.EU since November 2010.

Further, Switzerland is a founding member of the ENTSO-E (European Network of Transmission System Operators for Electricity), which has been operational since the summer of 2009. ENTSO-E is made up of 42 operators of transmission systems in 34 European countries. ENTSO-E's main responsibilities are to draw up network codes, coordinate the TSOs and further develop the transmission systems.

Transactions between affiliates

31 Restrictions

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

There are no specific restrictions on transactions between electricity utilities and their affiliates. However, the parties have to comply with the rules on unbundling. It is, therefore, required that electricity supply companies secure the independence of their network operations. Cross subsidisation between network operation and other areas of activity is prohibited.

32 Enforcement and sanctions

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

Not applicable.



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