

Austria

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Description of domestic sector

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments.

The domestic natural gas sector was fully opened to competition as of 1 October 2002, before Directive 2003/55/EC was passed. In Austria, around 9 billion m³ of natural gas is sold per year. About 20 per cent of this volume is covered by domestic production by two companies: OMV Exploration & Production Austria GmbH and Rohöl-Aufsuchungs AG. One-third of Austrian yearly domestic consumption can be stored in the underground storage sites (depleted gas fields) of the above-mentioned two companies. The transportation system in Austria is divided into three control areas (East, Tirol and Vorarlberg). The control areas of Tirol and Vorarlberg are only connected to the German transportation system, having no connection within Austria and do not include any domestic production or storage sites. Within Control Area East, in addition to the domestic transmission system, major transit pipelines exist connecting the import station Baumgarten at the Austrian–Slovakian border near Vienna with Italy (Trans Austria Gasline, TAG), Germany (West Austria Gasline, WAG), Hungary (Hungary–Austria Gasline, HAG) and Slovenia (Croatia) via the Trans Austria Gasline and the South East Gasline (SOL) transporting about 40 billion m³/a of mainly Russian gas dedicated to other Western European states. These transit pipelines are operated by OMV Gas GmbH; the transportation capacity in TAG is marketed by Trans Austria Gasleitung GmbH; and in WAG by Baumgarten-Oberkappel Gasleitungen GmbH.

Despite the full opening of the market by law as of 1 October 2002, the gas markets in Tirol and Vorarlberg are still dominated by the local gas utilities, since access to these areas is only possible via Germany and, until now, no alternative supplier has been able to compete in these areas. Within Control Area East, which comprises the seven other federal provinces of Austria including the capital Vienna, competition for industrial consumers as well as at household level exists. The Austrian gas market model enacted in October 2002 enables easy change of supplier. The independent system operator (AGGM Austrian Gas Grid Management AG) administers capacity at the transmission level and steers the gas flow therein, giving instructions to the five transmission companies. The balance group coordinator (AGCS Clearing & Settlement AG) provides a settlement of balancing energy. There are many different suppliers active in the Control Area East; the most important being Econgas, (a joint venture between OMV (50 per cent) and various former gas utilities (EVN, Wien Energie, Oberösterreichische Ferngas, Begas, Linz AG, together also having a 50 per cent shareholding), Steirische

Gas & Wärme (minority shareholder GdF), Salzburg AG, Terragas (a joint venture between Salzburg AG and EON), KELAG (minority shareholder RWE); Wingas; and Centrex.

At the interconnection point, Baumgarten OMV has established the Central European Gas Hub (CEGH) at which more and more players are active and ever greater volumes are traded.

The Austrian energy regulator (Energie-Control-Kommission (ECK) and Energie-Control GmbH (ECG)) is quite active in the fields of public information and consumer protection, as well as with respect to tariff regulation. As of 1 February 2008 the system of setting the network tariffs for domestic transportation was changed. Tariffs are now calculated for a five-year regulation period with fixed yearly cost reduction of a minimum of 1.95 per cent per year. However, tariffs may rise owing to new investments within this period.

Policy and legal framework

- 2 What is the statutory framework for the domestic natural gas sector?

Natural gas matters lie mainly within federal competence. The following statutes form the main legislative framework:

- the Gas Economy Act (Gaswirtschaftsgesetz), providing the main rules on the organisation of the natural gas sector as well as the administrative requirements for obtaining licences to operate and for pipeline construction permits, BGBl I 121/2000 as amended;
- Regulations (EC) No. 1775/2005 of the European Parliament and the Council of 28 September 2005, regarding the conditions for access to natural transmission pipelines, governing third-party access to transmission pipelines not primarily used for domestic transportation and directly applicable;
- the Energy Regulatory Authorities Act (Energie-Regulierungsbehördengesetz), providing for the establishment of the independent regulatory authorities, the ECK and ECG, and defining their respective competences; BGBl I 121/2000 as amended;
- the Energy Steering Act (Energienkungsgesetz 1982), providing rules for measures in case of lack of security of energy supply in general, including specific regulations for the gas sector; BGBl I 545/1982 as amended;
- the Price Transparency Act (Preistransparenzgesetz), governing the requirements for transparency of prices for mineral oil, gas, electricity and pharmaceuticals, BGBl 1992/761 as amended; and
- the Mineral Resources Act (Mineralrohstoffgesetz), governing the exploration and production of mineral resources including licensing and permit rules; BGBl I 37/1999.

The federal provinces of Austria have only minor legislative competences in respect of gas installations in private buildings.

The ECK or ECG issues ordinances on various issues relevant to the functioning of the Austrian market model, including change of supplier, load profiles, grid tariffs and tariffs for the independent system operator and the balance group coordinator. Market rules are discussed in detail between the market participants and ECG and published on the latter's website. The main parts of the market rules are included in the general terms and conditions of the distribution network operators, the transmission system operators for cross-border transportation (export and transit), the independent system operator, the balance group coordinator and the balance group representatives, which are subject to approval by the ECK and the main contents of which are specified in the Gas Economy Act.

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

The government has pursued the liberalisation of the natural gas sector in compliance with EC directives and regulations. In 2006, the Energy Supply Security Act 2006 was passed in the Austrian Parliament, amending the above-mentioned Austrian acts and including more competences for the regulatory authority, specific regulations in respect of security of supply issues, trying to transpose Directive 2004/67/EC on Security of Supply into national law and adapting the Austrian Market Model on third-party access following experiences in practice since 2002.

Government policy is set by the minister of economy and labour; laws are passed by Parliament; while the head of one of the regulatory authorities – the managing director of ECG – is very active in pursuing the goals of the regulator and monitoring the gas market.

With regard to the '3rd energy package' proposals of the European Commission resulting from the recent sector inquiry and report on the development of the gas market in Europe, Austria has joined forces together with seven other member states, including France and Germany, proposing a third option with regard to the issue of 'effective unbundling'. The minister of economy and labour stated that Austria has a well-developed gas market, including an independent system operator and that ownership unbundling would not ensure per se the investment into the electricity and gas infrastructure needed to ensure effective market liberalisation. First, the existing EC directives should be implemented by each member state.

Regulation of natural gas production

- 4 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentages of the country's natural gas needs are met through domestic production and imported production?

About 25 per cent of Austria's energy needs are met with natural gas. LNG is not directly available in Austria. Domestic production met 18 per cent of the country's natural gas needs in 2006, 82 per cent was covered from imports. 78 per cent of Imports come from Russian, 13 per cent from German and 9 per cent from Norwegian sources.

- 5 What is the ownership and organisational structure for production of natural gas (other than LNG)?

There are two companies exploring for and producing natural gas in Austria: the first being OMV Exploration & Produc-

tion Austria GmbH, a 100 per cent subsidiary of OMV AG. The shares of OMV AG itself are quoted on the Austrian stock exchange with two major shareholders (about 35 per cent are held by ÖIAG, the Austrian state-owned holding company and about 17 per cent by IPIC, the state-owned holding company of Abu Dhabi). The second is Rohöl Aufsuchungs AG, an independent company indirectly owned by EVN, EON and Steirische GasWärme. Both companies are also operators of underground storage sites in depleted gas fields.

- 6 Describe the regulatory framework and any material governmental or administrative authorisations applicable to natural gas exploration and production.

Under the Mineral Resources Act, the ownership of hydrocarbons not yet produced lies with the federal government. The federal government, represented by the minister of economy and labour, may conclude 'exploration, production and storage agreements' with entities having the technical and financial expertise for that kind of mining business, thereby transferring the right to the hydrocarbons produced in a given area to such entity. In exchange for such right, the entity has to commit itself to a certain amount of exploration activity to be agreed and to the payment of lease rentals and royalties in case of production. In addition to this contract under civil law, the entity undertaking such activities has to obtain certain permits in advance for operation, construction, and so on from the mining authority (ie, the minister of economy and labour).

The minister of economy and labour determines the regulatory policies governing the production of natural gas in accordance and within the framework of the Mineral Resources Act. There is no separate regulatory agency established for the activities governed by the Mineral Resources Act, including exploration for, production of and underground storage of natural gas.

Administrative decisions of the minister of economy and labour are final and may only be challenged before the Administrative or the Constitutional Courts of Austria on limited grounds including breach of constitutional rights or incorrect application of the law.

- 7 How does the government derive value from natural gas production?

Entities producing natural gas have to pay royalties to the federal government and earnings are subject to income or corporate tax.

Regulation of natural gas pipeline transportation and storage

- 8 What is the ownership and organisational structure for pipeline transportation and storage of natural gas?

In the Control Area East, OMV Gas GmbH is the owner and operator of the main transmission lines used mainly for the transit of natural gas to other European states. However, all of the transportation rights in the two main transit pipelines are vested in two different project companies, Trans Austria Gasleitung GmbH (shareholders ENI (89 per cent) and OMV (11 per cent)) and Baumgarten-Oberkappel Gasleitungen GmbH (shareholders OMV (51 per cent), GdF (44 per cent) and EON (5 per cent)), which conclude transportation contracts with shippers. OMV Gas GmbH and four other companies (EVN Netz GmbH, Oberösterreichische Ferngas AG, Gasnetz Steiermark GmbH and Begas Netz GmbH) own and operate transmission lines used mainly for domestic consumption. In addition to these

companies, there are about 20 distribution network operators. All TSOs, the project companies and the major DSOs (threshold 50,000 end-user connections) are legally unbundled.

The transmission lines used for domestic consumption and for transportation to and from storage and production sites are administered by the independent system operator, which is in the Control Area East AGGM Austrian Gas Grid Management AG (third-party access and gas flow management as well as physical balancing). Requests for transportation capacity for cross-border transportation have to be put forward to OMV Gas GmbH as a one-stop shop if transportation through lines owned or operated by two different entities is needed.

OMV Gas GmbH markets the storage capacities operated by OMV while Rohöl Aufsuchungs AG is the second operator of storage sites in Austria.

In the Control Areas of Tirol and Vorarlberg, the same market rules apply, but owing to the market structure in these areas, only the established gas utilities are active.

With regard to storage facilities see question 6.

- 9** Describe the regulatory framework and any material governmental or administrative authorisations applicable to the construction, ownership and operation of natural gas transportation pipelines and storage facilities.

There exist no special requirements with regard to the ownership of natural gas transportation pipelines and storage facilities other than the legal unbundling provisions as set out in the EC gas directive 2003/55/EC and implemented into Austrian law in accordance with section 7 Gas Economy Act.

For the construction and operation of natural gas transportation pipelines, permits primarily in accordance with the Gas Economy Act are required. The permits under the Gas Economy Act are issued by the minister of economy and labour as long as the respective pipeline does not require a permit under the Environmental Protection Act under which the local province is the competent authority. The construction and operation of storage facilities require permits under the Mineral Resources Act. In addition, other permits under different administrative laws, such as the Water Rights Act, the Environmental Protection Acts of the provinces, the Environmental Assessment Act, and others, may be necessary.

In order to act as network operator a licence is needed, which is issued by the Energy-Control Commission (ECK).

In accordance with the Energy Regulatory Authorities Act two separate regulatory bodies were established: the Energy Control Commission (ECK) and the Energy Control GmbH (ECG).

The ECK is established as judicial body, consisting of three members, including a judge, who have to make decisions unanimously and are appointed by the Government for five-year terms. The ECK has many competences such as tariff-setting, approval of general terms and conditions, approval of long term planning, third-party access, et cetera. Some decisions have to be issued in the form of individual official decisions, some in the form of general regulations.

The ECG is established in the legal form of a limited liability company that is wholly owned by the federal state of Austria. The managing director of ECG is appointed for five-year terms by the supervisory board, which consists of representatives of the Republic of Austria. ECG acts as regulator in the public and vis-a-vis the European Institutions and has also some minor competences of its own. The main duty of ECG is the organisation and preparatory work for the decisions of ECK.

Decisions of ECG may be challenged in front of ECK. Deci-

sions of ECK in the form of individual official decrees are final and may only be challenged before the Administrative or the Constitutional Courts of Austria on limited grounds including breach of constitutional rights or incorrect application of the law. General regulations of ECK may only be challenged before the Constitutional Court on very limited grounds. Since tariffs, including costs of network operators are set by general regulation, such decisions by ECK are, in effect, not examined in a material way, but only on formal grounds. This lack of accountability of ECK has been criticised.

- 10** How does a company obtain the land rights to construct a natural gas transportation or storage facility?

Generally, civil law contracts entailing the right of way or easement with the landowner are concluded. Subject to certain requirements, the Gas Economy Act as well as the Mineral Resources Act allow for expropriation, if the project is in the public interest.

- 11** How is access to the natural gas transportation system and storage facilities organised?

In accordance with the Gas Economy Act, storage entities have to provide non-discriminatory negotiated third-party access to gas storage on the basis of published general terms and conditions.

Access to the natural gas transportation system is dealt with differently in case of access for domestic consumption or transportation to and from the storage and production sites as compared with the case of access for cross-border transportation, including the transportation of natural gas from Austria to another state (ie, export and transit). Both access regimes are organised as regulated third-party access. Access to cross-border transportation is organised by OMV Gas GmbH as a one-stop shop if more than one transmission system operator is involved. Access to the domestic grid is organised by the local distribution system operator in case of access for customers and changes of supplier together with the independent system operator and for other transportation by the independent system operator.

Tariffs for domestic transportation are determined by the regulatory authority (ECK) and are paid fully by the customer (exit fee). With regard to cross-border transportation, TSOs have to apply for approval of their methods of tariff calculation and have to publish tariffs calculated in accordance with the methods approved by the ECK.

In accordance with the market model for domestic transportation, suppliers have to nominate the import of natural gas into the control area for each hour and have to pay balancing energy if consumption in each hour is higher than the nomination and receive the price for balancing energy if the nomination was higher than consumption. The balance group coordinator calls for bids to balance energy for each hour (buying or selling), and each supplier may take part in this tender. The independent system operators call the bids in order of merit, if needed to physically balance the system.

In cross-border transportation, shippers have to adhere to a certain range determined by each TSO. In case the deviations of entry to or exit from the respective pipeline system exceed this range, shippers have to pay penalties to the TSO.

In Austria, natural gas from domestic production and from import is high calorific gas within a certain quality range. An adjustment to different gas qualities is generally not necessary.

- 12** To what degree are pipeline systems interconnected with one another and by what means is cooperation between such systems established?

DSOs and TSOs are obligated under the Gas Economy Act to conclude interconnection agreements with neighbouring, connected system operators. For domestic transportation, DSOs and TSOs are obligated to conclude agreements with the independent system operator to regulate data transfer and the respective duties and responsibilities in detail in respect of third-party access and gas flow management. The main content of these contracts is described in the Gas Economy Act. The general terms and conditions of contracts with the independent system operator are subject to approval by the ECK.

- 13** Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Under the Gas Economy Act or the Mineral Resources Act, storage entities are not required to enlarge their facilities. Under the Gas Economy Act, network operators have the responsibility to expand their system if needed. It has been disputed whether this requirement conforms with the constitutional right to undisturbed ownership. So far, there has not been any legal dispute before an authority or court on this subject.

DSOs have the duty to expand the distribution network to physically connect a customer to the pipeline network, if economically feasible. The costs therefore are to be paid by the customer. For domestic transportation, one of the tasks of the ISO is to undertake long-term planning and propose a suitable adaptation to the transmission network to ensure that enough transportation capacity is available. Suppliers and customers can file an application for the expansion of transportation capacity in case their respective initial application for third-party access has been denied due to capacity constraints. If no network operator makes the necessary expansions, the ISO has to initiate a tender procedure for the proposed measures. The cost of the expansion has to be included by the regulatory authority in the calculation of the transportation tariff. That means that the investor is entitled to reimbursement of the necessary costs plus a reasonable margin as determined by the regulatory authority.

For cross-border transportation, no such system exists.

- 14** Describe any regulation of the prices or terms of service for pipeline or storage services.

See question 11.

- 15** Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

Any user of a transportation system in Austria has to ensure that the gas delivered to the system operator for transportation complies with certain quality specifications included in the respective general terms and conditions for pipeline access. This applies to domestic production, stored gas and imported gas. Therefore, the processing of gas lies outside of the transportation service of the network operator. Nevertheless, the network operators have facilities, namely dehydration plants, in case off-specification gas is delivered. If off-specification gas is delivered, network operators have the right to refuse acceptance of this gas.

- 16** Describe the contractual regime for transportation and storage.

See question 11.

Regulation of natural gas distribution

- 17** What is the ownership and organisational structure for the local distribution of natural gas?

Gas distribution networks are operated by the utilities of municipalities and of regional distribution operators covering a part or a whole province. These DSOs have to be legally unbundled if they supply more than 50,000 customers. Most of the DSOs are directly or indirectly under the control of the respective province or municipality. Some have, directly or indirectly, minority shareholdings of international gas companies (ie, GdF, RWE, EnBW).

- 18** Describe the regulatory structure and governmental or administrative authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

DSOs need a licence under the Gas Economy Act, which until now was always granted for an indefinite period. This licence is granted by the ECK. DSOs are obliged to connect any customer to their system, if economically feasible. Other than that, the Gas Economy Act does not stipulate any further specific public service obligations.

With regard to questions concerning the regulator see question 9.

- 19** How is access to the natural gas distribution grid organised?

Besides the network connection agreement for the physical connection, the customer also has to apply to the DSO for third-party access. In this application, the customer has to specify the entry point into the control area from which it will receive the natural gas. The DSO checks if transportation is possible within its distribution network and simultaneously transfers the application to the ISO, who checks if the transportation is possible in the transmission network. If both are possible, network access is granted for the applied hourly transportation capacity and the applied period of time. A similar procedure applies in case of a change of supplier by the customer. The customer only has to conclude a contract with the DSO in accordance with the general terms and conditions of the DSO, which are subject to approval of the ECK.

- 20** Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Prices for network distribution services are set by the ECK in an ordinance (the Gassystemnutzungstarifverordnung) (GSNT). The general terms and conditions of the DSO are also subject to the approval of the ECK. There is very little room for individual agreements between the DSO and its customers. The GSNT is renewed regularly by the ECK. Until now, this has been done nearly every year. If the income deriving from the regulated tariff no longer covers the costs of a DSO, the DSO can apply for a change of the GSNT. (This also applies to any TSO.)

21 May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

See question 13 in respect of the first question.

In accordance with the Gas Economy Act, third-party access has to be granted primarily on a first-come, first-served basis. Therefore, the regulator does not have the possibility of limiting service to existing customers in favour of new customers.

22 Describe the contractual regime in relation to natural gas distribution.

See question 20.

Regulation of natural gas sales and trading

23 What is the ownership and organisational structure for the supply and trading of natural gas?

In the Austrian domestic market, all former integrated gas companies are active as suppliers to customers. Most former local utilities still have a substantial market share in their home market (province or municipality). There are also some new suppliers active in the Austrian market, mostly subsidiaries of German gas companies. The local suppliers active in the provinces of Tirol and Vorarlberg receive natural gas from German wholesalers at the German/Austrian border. The suppliers active in the Control Area East receive gas from domestic production, Russia, Norway and Germany. Since 2006, Eongas (a joint venture between OMV and five Austrian utilities) receives gas directly from Gazpromexport and no longer via OMV. The local suppliers not integrated in Eongas (Steirische GasWaerme, Kelag and Salzburg AG) receive their Russian gas via a Russian-dominated trading subsidiary (GWH).

In 2006, trading at the Austrian Central European Gas Hub (CEGH) increased substantially. Title transfers increased by 254 per cent from 27.82 million MWh to 98.61 million MWh. More than 20 entities are registered at this hub. Besides this trading option, trading is also very easy within the market rules of the control area. Volumes can even be traded afterwards to enable suppliers to balance their position on the balancing market.

24 To what extent are natural gas supply and trading activities subject to governmental oversight?

Gas traders and suppliers have to give notice to the ECG before starting business in Austria. ECG has the power and duty to receive statistical data also from traders and suppliers. Suppliers have to notify ECG of the conclusion of gas supply contracts with a term of more than one year and a volume of more than 250 million m³/a. Gas traders and suppliers have to notify ECG of their general terms and conditions for the supply of customers whose consumption is allocated using load profiles. Certain obligatory content of these general terms and conditions is specified in the Gas Economy Act. ECG has the power to forbid the use of the notified general terms and conditions if they are in contradiction to the law, especially consumer protection law.

In addition, ECG may inform the competition authority of anti-competitive behaviour in the energy market.

25 How are physical and financial trades of natural gas typically completed?

Physical and financial trade of natural gas are typically concluded as OTC contracts. Standard forms are used at the CEGH, which are available on its website.

26 Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

No, there is no institutional single provider of gas and transportation. The transportation and distribution of natural gas for the supply of the customer is a bundled product, which is paid for by the customer with a stamp tariff determined by the ECK in a separate ordinance (GNST).

Transportation from and to storage and production as well as transit can be booked separately.

However, some suppliers still offer the commodity gas and transportation within Austria as a bundled product to customers.

The gas commodity itself can be bought from different suppliers and the storage of gas is provided by two separate storage entities.

Regulation of liquefied natural gas (LNG)

27 What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

LNG is not directly available in Austria. Since Austria has no direct connection to the sea, Austria has not enacted any rules.

28 Describe the regulatory framework and any material governmental or administrative authorisations required to build and operate LNG facilities.

Not applicable.

29 Describe any regulation of the prices and terms of service in the LNG sector.

Not applicable.

Mergers and competition

30 Which governmental body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

The governmental body in charge of the general supervision of competition in the natural gas sector, in particular with regard to the principle of non-discriminatory treatment of market participants, is ECG. The ECK is, inter alia, competent to decide disputes about the denial of third-party access. Both authorities apply the legislative framework under the Gas Economy Act. ECG also cooperates with the Federal Competition Authority in prosecuting anti-competitive practices under the Cartel Act, such as abuse of market dominance, price fixing, etc. Fines under the Cartel Act are imposed by the Cartel Court upon request of ECG or the Federal Competition Authority. Finally, the district administrative authorities are competent to prosecute violations of administrative law as set out in the Gas Economy Act.

31 What substantive standards does that governmental body apply to determine whether conduct is anti-competitive or manipulative?

See question 30.

32 What authority does the governmental body have to preclude or remedy anti-competitive or manipulative practices?

ECG has the power to order market participants to comply with the regulatory framework. Furthermore, fines of up to €14,600 can be imposed by the district administrative authority upon violation of the obligations under the Gas Economy Act. Moreover, the Cartel

Update and trends

After the major changes and adaptations enacted in 2006 with the Energy Security of Supply Act 2006, no major changes to the regulation of the natural gas sector took place in 2007.

The Long Term Plan 2007 of AGGM, the Independent System Operator Control Area East, was approved by ECK, including the plan to build and enhance transmission pipelines within Austria in order to meet the future demand for transmission pipeline capacity within the Control Area East. The agreements necessary for the start of construction by the transmission system operators have yet to be concluded.

The Gas Industry is looking to Brussels for the outcome of the current debate on the proposals of the EC Commission under the '3rd energy package'.

Court may order the market participants involved to refrain from anti-competitive conduct and it may also impose fines.

- 33** Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

Under the exploration, production and storage agreement, the federal government regularly reserves the right to cancel an agreement if mergers or other changes of control of the contracting party take place without the prior approval of the federal government. There is no formal approval procedure in place since this right derives from a contract under civil law. However, depending on the issue, the minister of economy and labour has proven in the past that decisions can be obtained in a timely manner.

Besides this special contractual requirement, any merger (or other form of concentration within the scope of the Austrian Cartel Act) is subject to the general pre-merger notification requirement; such notification must be made to the Federal Competition Authority if the turnover thresholds under the Cartel Act (turnover in the year before the merger or concentration of undertakings involved exceeded €300 million on the worldwide market, €30 million on the Austrian market and for

at least two undertakings, €5 million on the worldwide market) are reached. The merger must not be implemented before the Federal Competition Authority and the Federal Cartel Prosecutor abstain from initiating an in-depth investigation (usually within about five weeks after notification) or – in the case of an in-depth investigation – the Cartel Court approves the merger or concentration (the merger or concentration can only be disapproved within five months from the beginning of the in-depth investigation procedure). A merger or concentration will not be approved if its implementation creates or intensifies a dominant market position.

- 34** In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

Since the network tariff has to be set by the regulator on a cost-plus principle, there is no room for including the purchase price of the company operating as network operator in the tariff. In respect to the purchase of a supplier, there are no restrictions by law since prices of the commodity gas are not regulated.

- 35** Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

Apart from the applicable merger control rules, there are no special restrictions on the acquisition of shares in gas utilities. However, some gas businesses are part of companies of which, under federal or provincial law, at least the majority of the shares have to remain in public ownership.

There are no corporate governance regulations or rules regarding the transfer of the assets of gas utilities. In case of the transfer of the assets of a network operator, however, the new owner will have to apply for a new licence to operate and will have to fulfil all the requirements to obtain such licence under the Gas Economy Act, including the requirement of a seat in Austria or in another EC or EEA member state.

International

- 36** Are there any special requirements or limitations on foreign companies acquiring interests in the natural gas sector?

No, with the exception mentioned in question 35.

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37 To what extent is regulatory policy affected by treaties or other multinational agreements?

Regulatory policy is mainly affected by EC law, directives and regulations.

38 What rules apply to cross-border sales or deliveries of natural gas?

There are special rules for third-party access to cross-border transportation in place (see previous questions). Under the Gas Economy Act, access to the grid may be refused to a customer who would not be entitled to access in the country in which the gas supplier or a company controlling such supplier is domiciled and where the ECK obtains knowledge of such fact (reciprocity rule). There are no other special rules in place for cross-border sales or deliveries of natural gas.

Transactions between affiliates

39 What restrictions exist on transactions between a natural gas utility and its affiliates?

Network operators (TSOs, DSOs and the ISO) have to comply with the general non-discrimination and confidentiality rule. The annual accounts of natural gas undertakings shall indicate any transaction with affiliated undertakings exceeding the value of €1 million. Chartered accountants have to monitor if the consideration is appropriate.

40 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

Since the obligations mentioned under question 39 are part of the legal unbundling rules, it is ECG that supervises the adherence to these rules.