

# Electricity Regulation 2020

Contributing editor  
John Dewar



**Publisher**

Tom Barnes

tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall

claire.bagnall@lbresearch.com

**Senior business development managers**

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

**Published by**

Law Business Research Ltd

Meridian House

34-35 Farringdon Street

London, EC4A 4HL, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between August and October 2019. Be advised that this is a developing area.

© Law Business Research Ltd 2019

No photocopying without a CLA licence.

First published 2003

18th edition

ISBN 978-1-83862-170-4

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



---

# Electricity Regulation 2020

---

**Contributing editor****John Dewar****Milbank LLP**

---

Lexology Getting The Deal Through is delighted to publish the eighteenth edition of Electricity Regulation, which is available in print, as an e-book, and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would like to thank the contributing editor, John Dewar of Milbank LLP for his assistance with this volume. We also extend special thanks to Kirsti Massie of White & Case, who contributed the original format from which the current questionnaire has been derived, and who helped to shape the publication to date.



London

October 2019

---

Reproduced with permission from Law Business Research Ltd

This article was first published in October 2019

For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

# Contents

<b>Global overview</b>	<b>3</b>	<b>Japan</b>	<b>99</b>
John Dewar Milbank LLP		Nagahide Sato, Sadayuki Matsudaira and Junya Ohashi Nishimura & Asahi	
<b>Angola</b>	<b>7</b>	<b>Mexico</b>	<b>107</b>
Ricardo Andrade Amaro and Pedro Capitão Barbosa Morais Leitão, Galvão Teles, Soares da Silva & Associados, Sociedade de Advogados, SP, RL		Rogelio López-Velarde, Amanda Valdez and Daniela Monroy Dentons López Velarde, SC	
<b>Argentina</b>	<b>14</b>	<b>Netherlands</b>	<b>116</b>
Hugo Martelli Martelli Abogados Rogelio Baratchart Tecnolatina SA		Sophie Dingenen and Margot Besseling Bird & Bird LLP	
<b>Australia</b>	<b>20</b>	<b>Nigeria</b>	<b>124</b>
Andrew Monotti, Simon Cooke and William Osborn King & Wood Mallesons		Ike C Ibeku, Ifeyinwa Ufonde and Shammah Vidal Benchmac & Ince	
<b>Belgium</b>	<b>29</b>	<b>Panama</b>	<b>133</b>
Arnaud Coibion, Lothar Van Driessche and Philippe Jonckheere Linklaters LLP		Erika Villarreal Z, José A Brenes and Ixalondra Chee Chong Anzola Robles & Asociados	
<b>Brazil</b>	<b>37</b>	<b>Portugal</b>	<b>142</b>
Marcello Lobo and Pedro Ícaro Lopes Vargas Pinheiro Neto Advogados		Ricardo Andrade Amaro, Joana Alves de Abreu and Pedro Capitão Barbosa Morais Leitão, Galvão Teles, Soares da Silva & Associados, Sociedade de Advogados, SP, RL	
<b>Croatia</b>	<b>46</b>	<b>South Africa</b>	<b>150</b>
Ivana Manovelo and Miran Macesic Macesic & Partners LLC		Jonathan Behr Werksmans Attorneys	
<b>Ecuador</b>	<b>52</b>	<b>Spain</b>	<b>159</b>
Roque Bustamante Bustamante & Bustamante Law Firm		Gonzalo Olivera and Alberto Artés King & Wood Mallesons	
<b>Ghana</b>	<b>59</b>	<b>Turkey</b>	<b>166</b>
Kimathi Kuenyehia, Sarpong Odame, Kojo Amoako and Kafui Quashigah Kimathi & Partners, Corporate Attorneys		Değer Boden Akalın, Şeyma Olğun and Ayşegül Önel Boden Law	
<b>India</b>	<b>71</b>	<b>United Kingdom</b>	<b>179</b>
Neeraj Menon and Akshita Amit Trilegal		John Dewar and Seyda Duman Milbank LLP	
<b>Ireland</b>	<b>83</b>	<b>United States</b>	<b>186</b>
Peter McLay, Eoin Cassidy and William Carmody Mason Hayes & Curran		Daniel Hagan, Jane Rueger and John Forbush White & Case LLP	
<b>Italy</b>	<b>92</b>		
Arturo Sferruzza and Ginevra Biadico Norton Rose Fulbright Studio Legale			

# Angola

Ricardo Andrade Amaro and Pedro Capitão Barbosa

Morais Leitão, Galvão Teles, Soares da Silva & Associados, Sociedade de Advogados, SP, RL

## GENERAL

### Policy and law

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

Government energy policy is set out under the Policy and Strategy for the National Energetic Security, approved by Presidential Decree No. 256/11 of 29 September. This instrument defines the focus of government policies as:

- restructuring state-owned companies;
- developing a strategic and regulatory framework for renewable energies;
- reinforcing powers of the electricity regulatory authority, Regulatory Institute of Electricity and Water Services (IRSEA);
- revising the legal framework for the electricity sector;
- defining an attractive model for private investment and development of its legal framework; and
- progressively eliminating electricity price subsidies.

The main body of legislation governing the electricity sector is Law No. 14-A/96 of 31 May, as amended (the Electricity Act), which establishes the general framework of the legal regime concerning the undertaking of generation, transmission, distribution and use of electrical energy. These activities are governed, in accordance with the provisions of the aforementioned statute, by the following principles:

- permanent supply of energy in adequate terms relative to consumers' needs and national development;
- progressive reduction of costs through rationalisation and efficiency in the resources used down the value chain, from generation to consumption;
- environmental protection in the conception and management of projects and in the undertaking of activities that make up the electricity sector's value chain;
- safety of persons and assets and respect for property rights in the engineering and implementation of projects in the electricity sector;
- compliance with safety rules regarding persons and assets and respect for property rights in the engineering and implementation of projects as well as in the use of equipment; and
- permanent search for more efficient output levels with the aim of reducing waste of natural resources and production and accumulation of waste products.

This statute also enshrines the principles of equal treatment and opportunity in the exercise of the activities of generation, transmission and distribution of electricity, and the qualification of the transmission and distribution of electricity as a public service.

### Organisation of the market

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

The Angolan electricity market is a regulated market whereby the exercise of the various activities of the value chain tied to the Public Electricity System (PES) (ie, generation, distribution, transmission, supply) are subject to concessions and licences, as applicable, granted by the state.

In general, the Angolan electricity system is divided into two separate segments:

- the PES, which encompasses the Electricity National Transmission Network (NTN) and all generation and distribution infrastructures tied to the NTN; and
- the Non-Tied Electricity System (NTES), which encompasses non-tied producers, self-producers and non-tied customers (collectively, non-tied agents).

The producers tied to the PES are public service concessionaires or licence holders which have the obligation to sell electricity to the NTN concessionaire. Under its capacity as a 'single buyer', the NTN concessionaire is required to acquire all power generated by tied producers. To do so, tied producers and the NTN concessionaire must enter into power purchase agreements (PPAs), which set out the terms and conditions of their commercial relations.

Subsequently, the NTN concessionaire (in which the Angolan state must have a majority equity participation or a veto right) must sell the electricity acquired under the PPAs to the high-voltage (HV) distribution network operators, at a single price, including those who operate in isolated systems.

In turn, HV distributors sell electricity to medium-voltage (MV) distributors who then sell electricity to low-voltage (LV) distributors, who in turn sell the electric power to the customers, therefore acting as suppliers.

Without prejudice to the necessities of the PES, the non-tied agents are committed to the role of strengthening the competitive regime on the supply and consumer markets of the Angolan electric system. Hence, non-tied producers and customers are entitled to establish bilateral agreements, freely negotiated between the parties, governing the terms and conditions of the supply of electricity. Nonetheless, the terms and conditions of such agreements must comply with the Regulation for the Licensing and Security of Electric Facilities and the Networks Access Regulation, as well as the rules and procedures put into force by the IRSEA. With the reform of the General Electricity Law, non-tied producers who wish to sell their electricity to the PES are no longer required to enter into generation concession agreements or request the award of a power generation licence.

The commercial relationships established under the regime of the PES are therefore regulated, with contractual terms and sale prices that

are administratively set, as opposed to relations with non-tied agents, which allow contractual terms and prices to be freely established by the parties. Migration of tied customers to the NTES is allowed.

## REGULATION OF ELECTRICITY UTILITIES – POWER GENERATION

### Authorisation to construct and operate generation facilities

#### 3 | What authorisations are required to construct and operate generation facilities?

The authorisation to develop generation (without prejudice to the exemption applicable to non-tied producers) activities is granted through concession agreements, entered into with the Angolan government, or through licences granted by the local authority, depending on the circumstances.

On the other hand, construction of electric facilities is subject to the licensing procedures prescribed in Decree No. 41/04 of 2 July, the Regulation for the Licensing and Security of Electric Facilities.

Under this Regulation, any entity interested in developing new electricity facilities is required to obtain an establishment licence (which grants the authorisation for the construction of the facility) and, subsequently, an exploration licence, which grants the necessary authorisation to start operating the facility.

The request for these licences is made to the licensing entity (the entity within the energy sector ministry that is competent to conduct the licensing process), with full details of the project and all other elements necessary to understand the project as a whole.

The licensing entity may impose any modifications it deems essential to ensure the safety of the population and assets as well as compliance with the applicable security regulations. In certain situations, the project may be subject to various consultation procedures, namely with affected populations or official departments in charge of activities that are affected by the project in question.

After all the foregoing formalities are successfully concluded, an establishment licence is granted after the payment of the fee, allowing the commencement of construction. Usually, the project developer is obliged to finish the construction works within two years of the establishment licence being granted, although this may be extended depending on the circumstances.

Following the completion of the construction works, the project developer should request an inspection to ensure compliance of the facility with all applicable rules. If it complies, the exploration licence is granted (no later than 15 days after the inspection) and the facility may enter into operation.

In certain cases – mostly construction of small facilities that do not interfere with public domain terrains or assets – there may be an exemption from obtaining the establishment licence, or both the establishment and exploration licences.

### Grid connection policies

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

Network access of generators is made under the terms of the Network Access Regulation, approved by Presidential Decree 19/11 of 17 January.

Access to networks must be done in a non-discriminatory fashion by the *Rede Nacional de Transporte de Electricidade*, EP (RNT) concessionaire (see question 9) and tied distributors in high voltage and low voltage, as long as they have, as applicable, transmission or distribution capacity in the respective network and such access does not affect the standards of quality of service and security of supply.

Technical and commercial terms and conditions to use PES networks and interconnections vary in accordance with the type of user and network and must be agreed upon by the relevant agents.

### Alternative energy sources

#### 5 | Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

Presidential Decree No. 88/13 of 14 June established the Strategic Plan for New Environmental Technologies, which is divided into two perspectives: a transversal and a sectorial perspective. The governmental body in charge of implementing this project is the General Directorate for Environmental Technologies.

The transversal perspective aims essentially to promote, disseminate, foster and raise public awareness towards the use of environmental technologies in Angola, mainly by:

- developing information campaigns using the existent social media;
- implementing information campaigns in schools and local communities;
- creating a platform to share information between entities related to the environmental technologies industries; and
- promoting the country's adherence to an international sustainability index.

The sectorial perspective focuses on promoting and implementing tailored measures and actions by economic sector, including specific programmes for the following sectors:

- real estate and construction;
- agriculture and forestry;
- industry;
- energy and water;
- oil; and
- transportation.

Recently the government has also announced the 'Atlas for the New and Renewable Energies' whereby it has committed, until 2025, to install 800MW of renewable energy generation facilities, and further, to a target of 7.5 per cent of electricity generated to come from renewable energies.

### Climate change

#### 6 | 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?

Angola is a party to the United Nations Framework Convention on Climate Change, although currently assuming no binding targets for emissions reduction.

The main instrument of government policy addressing climate change and the non-binding commitments assumed is Presidential Decree No. 88/13 of 14 June (see question 5).

### Storage

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

There is no specific governmental policy or legislation concerning energy storage.

## Government policy

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

Angola does not have any nuclear power generation facilities in its territory and there is no specific governmental policy concerning the promotion of nuclear power.

## REGULATION OF ELECTRICITY UTILITIES - TRANSMISSION

### Authorisations to construct and operate transmission networks

- 9 | What authorisations are required to construct and operate transmission networks?

Transmission activities and more generally the operation of the NTN is granted through a concession system. Currently, the transmission system operator (TSO) is RNT, a state-owned enterprise.

Planning and construction of transmission networks is subject to a rolling six-year network investment plan prepared every two years by the TSO. The plan is subject to the approval of IRSEA.

The investment plan shall contemplate:

- demand forecast and scenario for the development of generation facilities considered in the expansion plans for electricity generation; and
- requests for connection of non-tied generators, self-generators, private supply generators, clients in very HV and tied distributors in HV and MV.

For each project, the transmission network investment plan must present:

- list of works to be executed;
- budgeted amount; and
- partitioning of costs, for projects involving other entities.

To construct the national transmission network the TSO, as concessionaire, has powers under the Electricity Act to create rights of way and expropriate immovable assets and associated rights thereof.

Finally, licensing of transmission facilities follows the rules set out under the Regulation for the Licensing and Security of Electric Facilities outlined in question 3.

### Eligibility to obtain transmission services

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

The Network Access Regulation grants the right of access to the networks of the PES (RNT and tied distribution networks) to the following entities:

- holders of a tied concession or licence for the generation of electricity;
- holders of a non-tied concession or licence for the generation of electricity;
- tied clients;
- non-tied clients; and
- 'self-suppliers' or private suppliers.

Requirements needed to obtain access to the network are established under a network access agreement (the draft of which is approved by IRSEA) which sets out technical and commercial conditions governing such access as well as the information to be provided by the network user.

## Government transmission policy

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

Increasing the expansion of the Angolan transmission networks and ensuring intra-national interconnection between the various networks has been a priority of government energy policy. The length of the network and number of substations are expected to almost double between 2017 and 2025 in accordance with the Angolan Strategy for Energy (Angola Energia 2025).

The high volume of investment needed and the technical difficulties to be surmounted will, however, pose challenges to achieving this target.

### Rates and terms for transmission services

- 12 | Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

The tariff system of the electricity sector in Angola has, since 2011, with the approval of the Tariff Regulation, general rules and criteria for the setting of tariffs and electricity prices to be practised and complied with by the entities that undertake activities of generation, transmission, distribution and use of electricity (regardless of whether or not they are connected to the PES) as well as for the setting out of costs to be transferred to the tariffs and the fixing of the allowed revenues to be attributed to the entities that undertake activities of transmission and distribution.

Setting of tariffs in the electricity sector is oriented by principles of:

- sustainability of the sector;
- general electrification of the country;
- support for economic efficiency;
- existence of a maximum tariff;
- existence of minimum cost tariffs that are compatible with the quality of service;
- economic and financial equilibria of companies that operate efficiently;
- transparency in the attribution of subsidies to consumers;
- support for energy efficiency;
- existence of a single tariff for the entire country; and
- transparency in the setting of tariffs.

The tariff structure is established by the competent body of the government, under the proposal of IRSEA and is applied by the RNT concessionaire and by the distribution companies to the users connected to their grids. The actual value of the tariffs is calculated from the formulas established in the Tariff Regulation.

Pursuant to the provisions of this regulation, the costs that may be transferred to the tariffs are based on the costs of the TSO, accrued of a reasonable rate of return, calculated in accordance with widely accepted valuation methodologies.

In relation to the calculation of the revenues of the transmission network concessionaire, these include:

- efficient investment costs;
- efficient operation and maintenance costs;
- other costs necessary to develop the activity in an efficient fashion; and
- a fair profitability over their efficient investments.

### Entities responsible for grid reliability

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

The TSO is the entity responsible for the reliability of the transmission grid.

It has the powers and responsibilities outlined in the Dispatch Regulation, approved by Presidential Decree No. 3/11 of 5 January, including:

- coordinate the functioning of the NTN;
- monitor output of generation facilities subject to centralised dispatch in accordance with a daily production schedule and merit order;
- coordinate unavailability of the NTN and generators subject to dispatch;
- receive information on the physical quantification of the existing bilateral agreements;
- manage system services necessary for the equilibrium of generation and consumption and the safe operation of the electric system; and
- identify needs of service systems.

For these purposes, the TSO prepares a 'system operation handbook', which is approved by IRSEA and further must be made available to all entities to which the handbook applies (and which are bound by its provisions).

## REGULATION OF ELECTRICITY UTILITIES – DISTRIBUTION

### Authorisation to construct and operate distribution networks

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

Distribution activities and more generally the operation of high-voltage and medium-voltage distribution networks are granted through a concession. *Empresa Nacional de Distribuição de Electricidade (EP)* a state-owned enterprise, is currently the distribution system operator.

Layout of distribution networks is a result of three-year rolling plans prepared annually by the distribution system operator (DSO) which indicate: a summary of the network expansion plans, with schedules and budget for the main works, notably substations and HV lines; and the main characteristics of the HV and MV distribution networks, notably:

- location of substations with indication of apparent installed capacity;
- bottlenecks and capacity restrictions in HV;
- maximum and minimum capacity for symmetrical three-phase short circuit, on the HV and MV bus and substations;
- type of connection of system neutral to the Earth; and
- quality of service indicators (pursuant to the Quality of Service Regulator set out in the Quality of Service Regulation).

The plan is subject to approval from IRSEA.

### Access to the distribution grid

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

As in the transmission network, requirements needed to obtain access to the distribution network are established under a network access agreement (which draft is approved by IRSEA), which establishes technical and commercial conditions governing such access as well as the information to be provided by the network user.

### Government distribution network policy

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

Government policy regarding the distribution network is focused mainly on ensuring that isolated rural areas (and thus not connected to RNT) have access to electricity.

In this sense, the 'Angola Energia 2025' strategy envisages to have around 200 rural electrification projects, comprising both closed distribution concessions and isolated systems where a concession shall be granted for the entire value of the chain (distribution and generation of electricity).

### Rates and terms for distribution services

17 | Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

In accordance with the Tariff Regulation, as in the transmission network, the costs that may be transferred to the tariffs are based on the costs of the entities that explore the distribution networks ('allowed revenues'), accrued of a reasonable rate of return, calculated in accordance with widely accepted valuation methodologies.

With regard to the allowed revenues on distribution costs, the calculation of said costs is made taking into account two components: the remuneration of the activity of distribution through high, medium and low voltage (named distribution standard aggregated value or VADP), and the remuneration of operation and investment costs of the connections to consumers' facilities (also known as the connection fee).

## REGULATION OF ELECTRICITY UTILITIES – SALES OF POWER

### Approval to sell power

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

Sale of electricity under the PES is done by the DSO (or other smaller distribution concessionaires that are tied to the PES) pursuant to the competences legally attributed to it.

Otherwise, supply of power to non-tied customers is subject to a licence granted by the government.

### Power sales tariffs

19 | Is there any tariff or other regulation regarding power sales?

Under the provisions of the Tariff Regulation, power sales tariffs correspond, in general, to the aggregate of the allowed revenues of the TSO, the allowed revenues of the distribution operators and the costs of acquisition of power by the TSO, acting in its capacity as 'offtaker' of electricity under the PES, to the generators.

Power sales tariffs are corrected by:

- a compensation fund, managed by the oftaker (TSO), which has the purpose of ensuring uniformity of sales tariffs across the country (and respective distribution networks);
- promotional tariffs for certain categories of clients;
- extraordinary adjustments proposed by the TSO following changes in costs arising out of taxation; and
- costs with the functioning of IRSEA, which accrue to the tariffs.

Currently, the price of electricity for the end consumer (domestic, commercial and industrial, low, medium and high voltage) under the PES is set by the provisions of Executive Decree no. 122/19, of May 24, which entered into force on 15 July 2019.

### Rates for wholesale of power

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

There are no organised markets for the wholesale of electricity. The TSO, acting as offtaker, purchases electricity from generators under PPAs entered into with the latter.

For the electricity acquired under the above-mentioned PPAs to become eligible as a cost reflected in the tariff system, such agreements must comply with the terms of the Tariff Regulation and further be the result of public procurement procedures or be agreements that pre-exist the entry into force of the regulation.

### Public service obligations

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

Suppliers of power in Angola (ie, the DSO and other distribution concessionaires) are subject to public service obligations, and thus may not impede access to the network or discriminate between end users.

## REGULATORY AUTHORITIES

### Policy setting

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

The authorities that determine regulatory policy with respect to the electricity sector are government (central and municipal) and IRSEA.

### Scope of authority

23 | What is the scope of each regulator's authority?

Pursuant to the provisions of the Electricity Act, the government is the entity responsible for defining energy policy. Such policy must promote the electrification of the country, competition in generation, distribution and supply markets and incentives to use electrical energy efficiently, and shall also work towards implementing infrastructures and setting adequate tariffs.

IRSEA is the authority responsible for regulating the electricity sector, notably the activities of generation, transmission, distribution and sale of electricity in the PES.

IRSEA is, among other things, in charge of regulating the business relationship between agents included in the PES and between the PES and non-tied agents, and the electricity industry, as well as the performance of duties related to mediation of conflicts of interest between the various intervenient parties in the industry.

### Establishment of regulators

24 | How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

IRSEA benefits from a considerable degree of financial autonomy, as its costs are supported by the TSO and the generators tied to the PES. IRSEA also draws revenues from other sources, such as fines imposed pursuant to the misdemeanours it must prosecute.

Nevertheless, this entity is superintended by the holder of the executive power (ie, the President of the Republic), and its budget and annual accounts must be subject to prior approval by the government.

### Challenge and appeal of decisions

25 | To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

Decisions adopted by government or IRSEA may be challenged on the grounds that the same do not conform with legal or regulatory provisions or with general principles of public conduct, or are criminal or misdemeanours, depending on the decision adopted.

Decisions of the government and IRSEA may generally be challenged either internally (via claims to the same administrative body or via a 'hierarchical appeal') or before the administrative section of the civil courts.

## ACQUISITION AND MERGER CONTROL – COMPETITION

### Responsible bodies

26 | 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?

Pursuant to the provisions of Law No. 5/18 of 10 May (the Competition Act), the Competition Regulatory Authority is the authority that has the powers to oppose or sanction mergers and other changes of control in commercial undertakings, including those acting in the electricity sector.

It is worth mentioning, also, that there are restrictions in transferring control in utilities as the Electricity Act prohibits the transfer of concession rights in the electricity value chain without the prior consent of the granting entity (ie, the government).

### Review of transfers of control

27 | 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?

Merger control review shall be triggered by:

- a merger between two or more hitherto independent undertakings; and
- the acquisition of control, by one or more undertakings or persons, over other undertakings or parts of other undertakings.

Transactions resulting in any of the aforementioned events and that meet the following market share and turnover thresholds are subject to mandatory notification and cannot be implemented before a non-opposition decision is issued by the Competition Regulatory Authority:

- if the implementation of the concentration results in the acquisition, creation or reinforcement of a share exceeding 50 per cent in the national market for a particular good or service, or in substantial part of it;
- if the implementation of the concentration results in the creation or reinforcement of a share between 30 and 50 per cent of the national market of a particular good or service, and if at least two of the participating undertakings achieved individually in Angola a turnover of at least 450 million kwanza in the previous financial year; and
- if the aggregate combined turnover of the undertakings taking part in the concentration in Angola exceeded 3.5 billion kwanza.

A decision by the Competition Regulatory Authority for merger control review must generally be taken within (counting from the date of filing of the corresponding request) 120 days and may take longer if an 'in-depth investigation' is required.



In the investigation, the Competition Regulatory Authority shall assess whether the transaction will cause a 'material hindrance to effective competition' resulting from a dominant position. If it does, the Authority shall issue a decision prohibiting the completion of the deal (without prejudice of the intervening parties negotiating remedies in order for the transaction to be cleared).

### Prevention and prosecution of anticompetitive practices

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

The Competition Regulatory Authority is the entity that is, in general, primarily responsible for preventing and prosecuting anticompetitive and manipulative practices.

IRSEA, in turn, is in charge of:

- fostering and ensuring compliance with competition provisions in the electricity sector; and
- preventing any anticompetitive practices in the electricity sector.

### Determination of anticompetitive conduct

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

Conduct by electricity companies is generally deemed to be anticompetitive if it breaches the provisions of article 7 et seq of the Competition Act. In general terms, such provisions make the following unlawful:

- agreements (vertical or horizontal) between undertakings, and concerted practices or decisions by associations of undertakings, which have the effect of impeding, distorting or restricting competition (entirely or partially) in a material manner; and
- the abuse of market power (dominant position), in particular exclusionary abuse aimed at harming the dominant operator's competitors and preventing them from competing effectively in the market.

### Preclusion and remedy of anticompetitive practices

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

The following powers (among others) are exercised by the Competition Regulatory Authority and may be relevant to the effect of precluding or remedying anticompetitive practices or, more generally, in deterring anticompetitive practices:

- unannounced on-site inspections to target companies' premises (ie, dawn raids);
- mandatory requests for information and documentation;
- sealing premises where there may be accounting or other documentation relevant for the procedures being undertaken (during the period strictly necessary for collating proof); and
- request of any other services of the Administration, including law enforcement agencies, the cooperation that is necessary for the Competition Regulatory Authority to undertake its functions.

**M** **MORAIS LEITÃO**  
**L** GALVÃO TELES, SOARES DA SILVA  
 & ASSOCIADOS

**Ricardo Andrade Amaro**

ramaro@mlgts.pt

**Pedro Capitão Barbosa**

pcbarbosa@mlgts.pt

Rua Castilho, 165

1070-050 Lisbon

Portugal

Tel: +351 213 817 400

Fax: +351 213 817 499

www.mlgts.pt

## INTERNATIONAL

### Acquisitions by foreign companies

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

There are no special requirements regarding foreign companies acquiring interests in the electricity sector. However, acquisitions of Angolan companies by foreign entities (notably using foreign capital) should take into account the relevant provisions governing foreign investment and capital controls legislation.

In particular, the Angolan Act on Private Investment (Law No. 14/15, of 11 August) determines that foreign investment in electricity assets requires that Angolan nationals (individuals or companies) hold, at least, 35 per cent of the capital and voting rights of the entity that will realise such investment.

### Authorisation to construct and operate interconnectors

32 | What authorisations are required to construct and operate interconnectors?

Angolan energy policy (ie, Angola Energia 2025) sets out that interconnection of Angola to the SADC regional network is relevant owing to the country's reliance on hydroelectric power (necessarily volatile), allowing it to either export or import energy generated depending on the energy needs of Angola arising from time to time.

Alas, despite the above and the law establishing clearly that interconnectors are part of RNT (and thus managed by the TSO), no specific regulation exists concerning the construction and operation of interconnectors.

### Interconnector access and cross-border electricity supply

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

See question 33.

**TRANSACTIONS BETWEEN AFFILIATES****Restrictions**

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

Concerning exclusively electricity regulation provisions, no express restrictions exist on transactions entered into between electricity utilities and their affiliates.

**Enforcement and sanctions**

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

See question 34.

**UPDATE AND TRENDS****Key developments of the past year**

36 | Are there any emerging trends or hot topics in electricity regulation in your jurisdiction?

No updates at this time.

## Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Rail Transport
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Real Estate
Agribusiness	Dominance	Joint Ventures	Real Estate M&A
Air Transport	e-Commerce	Labour & Employment	Renewable Energy
Anti-Corruption Regulation	Electricity Regulation	Legal Privilege & Professional Secrecy	Restructuring & Insolvency
Anti-Money Laundering	Energy Disputes	Licensing	Right of Publicity
Appeals	Enforcement of Foreign Judgments	Life Sciences	Risk & Compliance Management
Arbitration	Environment & Climate Regulation	Litigation Funding	Securities Finance
Art Law	Equity Derivatives	Loans & Secured Financing	Securities Litigation
Asset Recovery	Executive Compensation & Employee Benefits	M&A Litigation	Shareholder Activism & Engagement
Automotive	Financial Services Compliance	Mediation	Ship Finance
Aviation Finance & Leasing	Financial Services Litigation	Merger Control	Shipbuilding
Aviation Liability	Fintech	Mining	Shipping
Banking Regulation	Foreign Investment Review	Oil Regulation	Shipping
Cartel Regulation	Franchise	Partnerships	Sovereign Immunity
Class Actions	Fund Management	Patents	Sports Law
Cloud Computing	Gaming	Pensions & Retirement Plans	State Aid
Commercial Contracts	Gas Regulation	Pharmaceutical Antitrust	Structured Finance & Securitisation
Competition Compliance	Government Investigations	Ports & Terminals	Tax Controversy
Complex Commercial Litigation	Government Relations	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Healthcare Enforcement & Litigation	Private Banking & Wealth Management	Technology M&A
Copyright	Healthcare M&A	Private Client	Telecoms & Media
Corporate Governance	High-Yield Debt	Private Equity	Trade & Customs
Corporate Immigration	Initial Public Offerings	Private M&A	Trademarks
Corporate Reorganisations	Insurance & Reinsurance	Product Liability	Transfer Pricing
Cybersecurity	Insurance Litigation	Product Recall	Vertical Agreements
Data Protection & Privacy	Intellectual Property & Antitrust	Project Finance	
Debt Capital Markets		Public M&A	
Defence & Security		Public Procurement	
Procurement		Public-Private Partnerships	
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)