



# Gas Regulation

in 36 jurisdictions worldwide

2011

Contributing editors:  
Florence Ninane, Alexandre Ancel and Jean-Yves Ollier



Published by  
*Getting The Deal Through*  
in association with:

ÆLEX  
Allen & Overy LLP  
Arthur Cox  
Bahamondez, Alvarez & Zegers  
Bech-Bruun  
Blake, Cassels & Graydon LLP  
Boga & Associates  
Cavelier Abogados  
Chandler & Thong-ek Law Offices Limited  
CMS Adonnino Ascoli & Cavasola Scamoni  
CRB Africa Legal  
Dechert LLP  
Estudio Moreno Baldivieso Abogados  
Fiebinger Polak Leon Rechtsanwälte GmbH  
Grata Law Firm  
Hoet Pelaez Castillo & Duque  
JD Sellier + Co  
Kluge Advokatfirma DA  
Kocián Šolc Balaštík, Advocates  
López Velarde, Heftyne y Soria, SC  
Lupicinio Abogados  
Lydian Lawyers  
Maćešić & Partners  
Martelli Abogados  
Mattos Filho, Veiga Filho, Marrey Jr e Quiroga  
Mohamed Ridza & Co  
Pillsbury Winthrop Shaw Pittman LLP  
Rizvi, Isa, Afridi & Angell  
RPA – Rui Pena, Arnaut & Associados  
Salans / Antonio Pascual & Asociados  
Scholtka & Partner Rechtsanwälte  
SNR Denton UK LLP  
Spaczyński, Szczepaniak i Wspólnicy spk  
Yukov, Khrenov & Partners



## Gas Regulation 2011

### Contributing editors

Florence Ninane, Alexandre Ancel  
and Jean-Yves Ollier  
Allen & Overy LLP

### Business development managers

Alan Lee  
George Ingledew  
Robyn Hetherington  
Dan White

### Marketing managers

Ellie Notley  
Sarah Walsh

### Marketing assistants

Alice Hazard  
William Bentley

### Subscriptions manager

Nadine Radcliffe  
Subscriptions@  
GettingTheDealThrough.com

### Assistant editor

Adam Myers

### Editorial assistant

Lydia Gerges

### Senior production editor

Jonathan Cowie

### Chief subeditor

Jonathan Allen

### Senior subeditor

Kathryn Smuland

### Subeditor

Davet Hyland

### Editor-in-chief

Callum Campbell

### Publisher

Richard Davey

### Gas Regulation 2011

Published by

Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd 2011  
No photocopying: copyright licences  
do not apply.

ISSN 1740-7826

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. Although the information provided is accurate as of March 2011, be advised that this is a developing area.

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

<b>Albania</b> Renata Leka and Besa Tauzi <i>Boga &amp; Associates</i>	<b>3</b>
<b>Argentina</b> Hugo C Martelli <i>Martelli Abogados</i>	<b>8</b>
<b>Austria</b> Thomas Starlinger and Stefan Korab <i>Fiebinger Polak Leon Rechtsanwälte GmbH</i>	<b>14</b>
<b>Belgium</b> David Haverbeke and Wouter Vandorpe <i>Lydian Lawyers</i>	<b>20</b>
<b>Bolivia</b> Luis Moreno <i>Estudio Moreno Baldívieso Abogados</i>	<b>26</b>
<b>Brazil</b> Giovani Loss Mattos Filho, Veiga Filho, Marrey Jr e Quiroga	<b>31</b>
<b>Canada</b> Dufferin R Harper and Jay Geers <i>Blake, Cassels &amp; Graydon LLP</i>	<b>38</b>
<b>Chile</b> Felipe Bahamondez <i>Bahamondez, Alvarez &amp; Zegers</i>	<b>46</b>
<b>Colombia</b> Andrés De la Rosa and the Business Law Department <i>Cavelier Abogados</i>	<b>55</b>
<b>Croatia</b> Miroljub Maćešić and Ivana Manovelo <i>Maćešić &amp; Partners</i>	<b>63</b>
<b>Czech Republic</b> Václav Rovenský and Tomáš Sequens <i>Kocián Šolc Balaštík, Advocates</i>	<b>69</b>
<b>Denmark</b> Per Hemmer, Johan Weihe and Rania Kassis <i>Bech-Bruun</i>	<b>76</b>
<b>Equatorial Guinea</b> Javier Lasa and Antonio Pascual <i>Salans / Antonio Pascual &amp; Asociados</i>	<b>82</b>
<b>European Union</b> Wim Vandenberghe and René Gonze <i>Dechert LLP</i>	<b>89</b>
<b>Faroe Islands</b> Per Hemmer, Johan Weihe and Rania Kassis <i>Bech-Bruun</i>	<b>95</b>
<b>France</b> Florence Ninane, Alexandre Ancel, Jean-Yves Ollier and Marie Potel-Saville <i>Allen &amp; Overy LLP</i>	<b>100</b>
<b>Germany</b> Solveig Hinsch and Boris Scholtka <i>Scholtka &amp; Partner Rechtsanwälte</i>	<b>106</b>
<b>Greenland</b> Per Hemmer, Johan Weihe and Rania Kassis <i>Bech-Bruun</i>	<b>111</b>
<b>Ireland</b> Alex McLean and Patrick McGovern <i>Arthur Cox</i>	<b>118</b>
<b>Italy</b> Pietro Cavasola and Matteo Ciminelli <i>CMS Adonnino Ascoli &amp; Cavasola Scamoni</i>	<b>125</b>
<b>Malaysia</b> Mohamed Ridza Abdullah <i>Mohamed Ridza &amp; Co</i>	<b>131</b>
<b>Mexico</b> Rogelio Lopez-Velarde and Amanda Valdez López Velarde, <i>Hefty y Soria, SC</i>	<b>138</b>
<b>Nigeria</b> 'Gbite Adeniji and Sina Sipasi <i>ÆLEX</i>	<b>146</b>
<b>Norway</b> Jane Wesenberg and Sondre Dyrlund <i>Kluge Advokatfirma DA</i>	<b>152</b>
<b>Pakistan</b> Ahsan Zahir Rizvi and Mayhar Mustafa Kazi Rizvi, Isa, Afridi & Angell	<b>158</b>
<b>Poland</b> Piotr Spaczyński and Anna Piotrowska <i>Spaczyński, Szczepaniak i Wspólnicy spk</i>	<b>165</b>
<b>Portugal</b> Mónica Carneiro Pacheco and Marisa Apolinário <i>RPA – Rui Pena, Arnaut &amp; Associados</i>	<b>173</b>
<b>Russia</b> Alexander Khrenov <i>Yukov, Khrenov &amp; Partners</i>	<b>179</b>
<b>Spain</b> Margarita Hernando Martínez-Arroyo <i>Lupicinio Abogados</i>	<b>187</b>
<b>Tanzania</b> Charles R B Rwechungura, Diana Mutafungwa and Cuthbert T Kazora <i>CRB Africa Legal</i>	<b>193</b>
<b>Thailand</b> Albert T Chandler <i>Chandler &amp; Thong-ek Law Offices Limited</i>	<b>199</b>
<b>Trinidad &amp; Tobago</b> Donna-Marie Johnson <i>JD Sellier + Co</i>	<b>205</b>
<b>United Kingdom</b> David Tenant, Sam Szlezinger and Preeti Capildeo <i>SNR Denton UK LLP</i>	<b>211</b>
<b>United States</b> Joseph H Fagan, Michael S Hindus, Robert A James and Julie D Hutchings <i>Pillsbury Winthrop Shaw Pittman LLP</i>	<b>223</b>
<b>Uzbekistan</b> Umid Aripdjanov and Ravshan Adilov <i>Grata Law Firm</i>	<b>231</b>
<b>Venezuela</b> Miguel Rivero and José Alberto Ramírez Hoet Pelaez Castillo & Duque	<b>238</b>

# Czech Republic

## Václav Rovenský and Tomáš Sequens

Kocián Šolc Balaštík, Advocates

### 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 and retail sales and usage.

The Czech Republic is strategically important in the European natural gas market as it transits natural gas from Russia to Western Europe.

The natural gas sector has undergone a tremendous change in the past decade. Within a few years of the end of the communist regime in 1989, the regional natural gas distribution companies formerly owned by the state were privatised. In 2002, RWE Gas won the tender for the privatisation of state-owned Transgas, a natural gas transportation company, which owned the pipeline by which natural gas is transported from Russia, and also acquired the majority interest in six of the regional natural gas distribution companies (the regional natural gas distribution companies are those with more than 90,000 customers). Currently, four of the regional gas distribution companies are controlled by the RWE Group and the remaining four regional natural gas distribution companies are controlled by other companies. As a result of unbundling requirements, RWE Transgas has spun off its transportation activities in a separate company, NET-4GAS, and the regional distribution companies have split into separate natural gas trading and distribution entities. In 2007, RWE TG voluntarily implemented the unbundling of its gas storage business, based on which it spun off its gas storage activities into a separate company, RWE Gas Storage. In addition to the eight regional natural gas distribution companies, as at the end of 2009, there were another 73 local distribution companies.

Prior to 2000, Czech energy-related legislation was incompatible with Directive 96/92/EC on joint rules of the internal electricity market and (at that time applicable) Directive 98/30/EC on joint rules of the internal natural gas market, in particular on the level of harmonisation with the *acquis communautaire* of the European Communities. The absence of rules for opening or liberalising the electricity and natural gas markets (ie, ensuring the principle of choice of the relevant energy supplier) and non-existence of certain legal institutions and state administrative bodies in the energy sector proved so significant that in 2000, the Czech parliament adopted Act No. 458/2000 on the Conditions for Business Activities and Performance of State Administration in Energy Sectors (the Energy Act), which took effect on 1 January 2001 and that, except for certain amendments, has remained in effect until today.

In 2004, the Energy Act was amended to provide for the liberalisation of the natural gas market in a similar way to the electricity market (ie, in accordance with the concept of third-party access governed by Directive 2003/55/EC). The Czech natural gas market has been fully liberalised since 1 January 2007, when all customers, including households, fell into the category of eligible customers that are entitled to choose their natural gas supplier.

In 2008, the ongoing liberalisation of the gas sector caused many new natural gas traders to commence business in the Czech Republic and many customers to change their gas suppliers.

In 2009, a significant amendment of the Energy Act aimed at bringing the Czech energy regulations in line with the European legislation and, after nine years' experience with the practical application of the Energy Act, making it more 'user-friendly' to the relevant energy sector participants (such as, for instance, facilitating the administrative procedures for conducting energy businesses, licensing or reducing public administration).

Energy sector regulation is not only subject to changes at the national level. Since 1999, the European Community has been implementing, in several steps, an internal natural gas market, the most important aim of which is to enable every customer in the European Union to have a choice in the market, to develop new trade opportunities and more intensive cross-border trading, increase effectiveness, increase competitiveness of prices, increase standards for services and to ensure secure supplies and sustainability. In 2009, the third energy liberalisation package was adopted by the European Community (including Directive 2009/73/EC on common rules for the gas market, EC Regulation No. 713/2009 establishing an Agency for the Cooperation of Energy Regulators and Regulation No. 715/2009 on conditions for access to the natural gas transmission networks) the scope of which is in particular to develop the harmonisation of the European gas sector policy, transparency, strengthening customers' rights and sector regulations (in particular through the newly established Agency), and unbundling and cooperation of the transmission systems operators. The implementation of the third energy liberalisation package in the Czech Republic is expected to be accomplished by 2011. Today, the gas market in the Czech Republic is composed of the following participants: gas producers, transportation system operators, distribution system operators, underground gas storage facilities operators, gas traders, customers and the market operator; the activities of gas transportation and market operation are licensed on an exclusive basis; other business activities in the gas sector are licensed, but are not exclusive; gas trading is licensed for a period of five years, market operation is licensed for a period of 25 years and other gas business activities are licensed for a period of up to 25 years.

Wholesale gas sales in the Czech Republic are carried out on the basis of individual contracts between suppliers and gas traders; in 2009, supplies from the largest natural gas supplier to the Czech Republic from Russia and Norway were performed on the basis of long-term 'take-or-pay' contracts. Retail gas sales in the Czech Republic are performed by numerous gas traders, among which Bohemia Energy has grown substantially (it gained approximately 32 thousand customers); the largest retail gas trader in the Czech Republic is the RWE Group. Currently, the Prague Stock Exchange announced that it is planning to implement a new project consisting in the creation of a commodity stock exchange for the territory of Central and Eastern Europe, which will be focused on gas trading.

- 2** 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?

The Czech Republic produces approximately 113 million cubic metres of natural gas annually, which is entirely used by domestic customers. This represents approximately 1.3 per cent of the total domestic consumption and, therefore, practically all natural gas is imported – 59 per cent from Russia and 37 per cent from Norway. Another 6 per cent constitutes import of natural gas from Germany; after the gas crisis in January 2009, caused by the dispute between Russia and Ukraine, Czech Republic increased imports from countries other than Russia; however, due to the fact that two large gas power plants (800MW each) are planned to be built in the Czech Republic and a 30 per cent increase in gas demand is expected, it is very likely that the volume of gas imports from Russia will eventually increase. The domestic production consists partly of surface degasification, which is only important locally in the northeastern part of the Czech Republic. Approximately 17 per cent of the Czech Republic's energy needs are met through natural gas. LNG is not used in the Czech Republic for covering the country's energy needs.

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

The policy of the Czech government is aimed at compliance with the relevant EU legislation, in particular, at the liberalisation of the natural gas market, which was fully implemented on 1 January 2007. The government wishes to ensure, given the basic division of the natural gas market between two big players, that the liberalised market is fully functional and that the customers are able to choose a natural gas supplier based on competitive and non-discriminative conditions. The three main pillars of the energy policy of the European Union, which the Czech Energy Policy should conform with, are defined as security of energy supplies, competitive character of the European economics and accessibility of energy for acceptable prices and support of the sustainability of the environment and climate changes control. In 2009 the climate package was adopted in the European Community, which will also have a significant impact on the energy policy.

The most important public bodies involved in the energy sector are:

- the Ministry of Industry and Trade (MIT), which, *inter alia*, provides consent for construction of new natural gas plants, prepares the state energy concept, decides on the construction of new natural gas pipelines and storage facilities, etc;
- the Energy Regulatory Office (ERO), which is technically independent of the government. ERO, for example, regulates certain natural gas price components and creates rules related to natural gas markets and together with the Antitrust Office supports competitive markets, grants or withdraws licences for business in the natural gas sector, formulates rules for organising the natural gas market, promotes economic competition and protection of the interests of end-users in areas such as energy businesses, where competition is not possible, etc;
- the State Energy Inspectorate, which oversees compliance with laws by the market participants; and
- the Czech Mining Office (heading nine local mining offices) which is also technically independent of government. The Czech Mining Office has competences in the area of mining activities.

## Regulation of natural gas production

- 4** What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

The most significant producer of natural gas is privately-owned oil and gas mining company Moravské Naftové Doly, which is also active in other countries in Europe and, among other countries, in Russia, Pakistan, Yemen and Sudan. All other natural gas (except for the surface degasation production with local importance) is imported by several companies from Russia, Norway and Germany (see above), among which RWE Transgas has, with regard to its history, a dominant position in the market and imports the gas only to the Czech gas traders (*ie*, not to the final customers) and VEMEX, sro, a subsidiary of OAO Gazprom, the Russian gas company, which imports the gas to both the final customers as well as to Czech gas traders. There are other companies that concluded gas purchase contracts for natural gas from Norway and Germany. Many new gas traders, who bought gas at favourable prices on the German spot market, entered the Czech gas market in 2009.

Act No. 44/1988, the Mining Act, which deals with the protection and use of the mineral resources (including natural gas), specifically sets forth the amount of fees to be paid for the use of the natural gas mining area and the natural gas mined.

- 5** Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Natural gas is a reserved mineral and exploitation is strictly regulated. Reserved mineral mining is restricted to individuals or legal entities with government authorisation in the form of a licence for mining activities, granted by the relevant local mining office, and only on the mining areas approved by the relevant local mining office. An application for mining area approval is processed by the relevant local mining office only with the consent of the Ministry of the Environment and the Ministry of Industry and Trade. The licence shall be granted on the basis of a written application and the relevant local mining office makes its decision on an assessment of the degree to which the specified conditions underlying the granting of the licence have been met. Administrative proceedings concerning establishment of the mining areas and issuing licences for mining activities follow rules stipulated by the Mining Act, the Act on Mining Activities and the Administrative Code; any party to such proceedings can file an appeal against the issued administrative decisions to the Czech Mining Office, which is the supreme body of the Czech state mining administration.

The mining, drilling and production activities are supervised mainly by the Czech Mining Office.

## Regulation of natural gas pipeline transportation and storage

- 6** Describe in general the ownership of natural gas pipeline transportation and storage infrastructure.

NET4GAS, a limited liability company, is the only owner of the main pipelines used for transit and transportation. RWE Gas Storage, a limited liability company, is the owner and the operator of the six main underground storage tanks. The two remaining main underground storage tanks are owned by MND Gas Storage, a joint stock company, and SPP Bohemia, a joint stock company. The underground storage tank owned by SPP Bohemia is not used for the needs of the Czech Republic. The natural gas transportation pipelines and storage facilities are privately owned.

- 7** Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

Construction of any natural gas direct transportation pipeline, any natural gas storage facility, any natural gas pipeline connecting a natural gas pipeline structure with structures of other states, any natural gas pipelines with pressure over 0.4MPa (megapascals) and any LNG storage facility with a capacity above 10 cubic metres requires authorisation from the MIT. Compliance with the general rules stipulated in Act No. 183/2006 on land planning and the building code (the Building Code) is also required during construction of gas transportation pipelines and storage facilities; the relevant administrative proceedings are held in the respective building offices.

A licence is required from the ERO in order to operate a natural gas transportation pipeline and storage facilities. The licence for the transportation of natural gas is exclusive for the whole territory of the Czech Republic. The licence for operation of storage facilities can be granted for a maximum of 25 years (and can be renewed). The applicant must, *inter alia*, evidence ownership or other right to use the facility, which is necessary for the performance of the licensed activity.

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

Under the Energy Act, a company licensed for natural gas business (eg, distribution or transportation) may construct a natural gas transportation or storage facility on third-party land pursuant to a valid zoning and construction permit, and may enter this third party land in order to establish, reconstruct, repair and operate natural gas facilities. However, the Energy Act also requires that a valid easement be concluded with the owner of the land in order to exercise the rights mentioned above. If such owner is unknown or an agreement is impossible to reach, the relevant construction authority can establish the easement provided that a set of strict conditions set forth in the Czech Expropriation Act is complied with. See also question 7. Currently major investments into the gas transportation system (Nord Stream, Opal and Gazelle on full reversibility of gas flow) and gas underground storage facilities (Tranovice and Tvrdonice) are being implemented or planned.

- 9** How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

The natural gas market in the Czech Republic is currently organised on the basis of third-party access to the transportation system, distribution systems and underground natural gas storage facilities. The operator of the natural gas transportation system must accordingly connect to the transportation system any party upon its request, which complies with the conditions stipulated by the Operation Rules of the Natural Gas Transportation System (the Operational Rules) and at the same time ensure non-discriminatory conditions for such access to the transportation system. Details are set forth in the Operation Rules (which specify, for example, the conditions for connection to the transportation system and details of the agreement on connection to the transportation system), the Rules for Organising the Gas Market and the Operational Code of the Operator of the Transportation System. Similarly, the operator of the underground storage facilities has a duty to grant access to the relevant storage facility under the conditions in the Rules for Organising the Gas Market, Operation Rules and Operational Code of the Operator of the Underground Storage Facilities. The storage capacity allocation is performed by means of a multiple-round electronic auction.

As a result of this principle, a customer has, in accordance with section 62 of the Energy Act, the right to connection to the trans-

portation (or distribution) system provided that the Operation Rules are complied with and provided that the owner of the respective real property grants it consent to such connection, to choose and to change, without any charge, its natural gas supplier, and for the transportation of an agreed volume of natural gas provided such customer has concluded an agreement to this effect with an operator of the transportation system (or the relevant distribution system) and if this is permitted by the technical conditions of the transportation (or relevant distribution) system. An entity trading with natural gas is similarly entitled to access to transportation (or distribution) system, provided such entity is a party to a relevant written agreement; also, any participant to the Czech gas market is entitled to use underground storage facilities, provided that there is a free storage capacity in the respective underground gas storage facility and such entity is a party to a relevant written storage agreement. Until 2009, RWE Transgas used approximately 90 per cent of the technical capacities of the storage facilities owned by RWE Gas Storage; following an investigation by the Antitrust Office, RWE has agreed to enable access to the volume of approximately 500 million cubic metres to third parties.

The price for the transportation of natural gas is regulated by the ERO in its price decisions, which ERO issues separately for individual years. The price for storage of natural gas is not regulated.

Balanced, safe and reliable operation of the natural gas system is ensured by the dispatching of the natural gas entrepreneurs, which must coordinate and cooperate in accordance with dispatching rules of the natural gas system of the Czech Republic. The quality of supplies of natural gas and related services is determined by the ERO.

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

Generally, an operator of a natural gas transportation system or storage facilities cannot be required to expand its facilities to accommodate new customers.

However, see question 14 regarding the public service obligations.

As regards new customers, any applicant that fulfils the prescribed conditions must be granted access to the natural gas transport pipelines or storage facilities.

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

LNG is currently not subject to natural gas (energy) regulation in the Czech Republic. The requisite technical requirements are not subject to special energy laws, only fuel-related regulations and Czech technical standards.

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

The agreements between the natural gas market participants are governed by the Energy Act and the respective secondary legislation (eg, by the Rules for Organising the Gas Market). There are several basic types of agreements, for example, on the supply of natural gas, joint services of natural gas supply and transportation or storage of natural gas. A transportation agreement, in particular, must include an obligation for a transportation system operator to transport, for a regulated price, for a natural gas producer, trader or customer, the agreed volume of natural gas.

Agreements that provide for transportation and storage do not require approval from the regulator. For details, see question 9. NET-4GAS is obliged to provide on-line information about its technical capacity for transportation of natural gas.

**Regulation of natural gas distribution**

- 13** Describe in general the ownership of natural gas distribution networks.

Many end-users receive natural gas directly from the eight regional distribution companies. In addition, as already mentioned above, there were 73 local distributors of natural gas on the Czech market as at the beginning of 2010. For details, see question 1. The natural gas distribution networks are privately owned.

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

A licence from ERO is required to operate a distribution network; the licence is granted for a maximum of 25 years (and may be renewed); the applicant has, *inter alia*, to evidence ownership or other right to use the facility that is necessary for operation of the licensed activity.

In the event of a pressing need and if it is in the public interest, distribution utilities are obliged to ensure distribution of natural gas above the extent provided by their distribution licences, or to provide their facilities to the necessary extent in return for compensation upon a decision of the ERO and in accordance with section 12 of the Energy Act.

The last instance suppliers are obliged to supply natural gas to the customers of a former distributor that has lost its distribution licence. Such obligation, however, shall not exceed a period of six months, and does not apply to customers whose consumption over the past 12 months exceeded 60,000m<sup>3</sup>.

In 2010, a new Regulation No. 994/2010 was adopted by the European Union, pursuant to which the measures for ensuring a secure gas supply were adopted, which shall be binding on all member states; the regulation sets forth extraordinary measures to be implemented when the market can no longer deliver the required volume of gas.

- 15** How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

See question 9, which also similarly applies to access to the distribution grid and system.

The prices for the distribution of natural gas are regulated by ERO on the basis of issuing of price decisions, which ERO issues usually once a year; such prices may be changed only after new relevant price decisions are issued by ERO. The terms of service may be changed by mutual agreement any time, but only within limits stipulated in the Energy Act and the respective secondary legislation.

- 16** 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?

Operators of natural gas distribution systems cannot be required to expand their facilities in order to accommodate new customers; however, see question 9. The regulator does not have the right to limit services to existing customers. As regards new customers, any applicant that fulfils the prescribed conditions must be granted access to the natural gas distribution services.

See also question 14 regarding the public service obligations.

- 17** Describe the contractual regime in relation to natural gas distribution.

See the first two paragraphs of question 12, which also applies to natural gas distribution agreements.

**Regulation of natural gas sales and trading**

- 18** What is the ownership and organisational structure for the supply and trading of natural gas?

There are many natural gas trading companies in the Czech Republic. RWE Transgas is the largest natural gas trader (it imports 87.7 per cent of gas to the Czech Republic) and supplies gas to regional gas trading companies, which in turn supply natural gas to the end-users. The second largest natural gas trader is VEMEX, a limited liability company, which supplies 8.5 per cent of gas. In 2009, there was an increase in the number of regional gas trading companies (105 licenses were granted by the ERO). Several regional gas traders were very successful in 2009, for example Bohemia Energy, a limited liability company, concluded new supply contracts with 32 thousand end-users.

- 19** To what extent are natural gas supply and trading activities subject to government oversight?

Natural gas trading is subject to licensing; the licence is granted by ERO for five years; the applicant must comply with certain requirements to obtain such licence.

The ERO, *inter alia*, monitors the compliance of the licence holders with Act No. 526/1990, the Price Act, and initiates investigations by the State Energy Inspection in certain instances and penalises non-compliance of the licence holders with the laws.

In addition, the market operator, a private company established by the state, which is, *inter alia*, also in charge of organising the short-term electricity market, organises the short-term natural gas market, monitors the underground storage facilities and monitors and evaluates balances for certain time periods with respect to planning, production, supplies and consumption of natural gas, capacities and output of the transportation and distribution systems and underground storage facilities.

- 20** How are physical and financial trades of natural gas typically completed?

The trading process of natural gas is rather complicated and is described in the Energy Act (as well as the basic terms for natural gas supply agreements); details are stipulated for instance in the Rules for Organising the Gas Market.

Currently, all trades take place at a ‘virtual purchase point’, where participants on the gas market (the subjects of subsequent balancing of fluctuations in natural gas supplies) make their offers to supply natural gas into the natural gas system or requests to take natural gas from the natural gas system. Subsequent balancing of fluctuations in natural gas supplies also takes place at the virtual purchase point.

- 21** 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.

Distribution and transmission is purchased as a bundled product. Natural gas as a product (medium) may be purchased alone, or together with natural gas distribution, transmission and storage pursuant to a joint services agreement under section 72 of the Energy Act.

**Regulation of LNG**

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

Given the conditions for transportation and transit of natural gas in the Czech Republic, there are no LNG facilities in the Czech Republic. See question 23.

- 23** Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

As mentioned above, LNG is not used in the Czech Republic as an energy medium. It is therefore subject only to minimal Czech energy regulation; the Energy Act only stipulates that construction of certain LNG storage facilities requires authorisation of the ERO. However, Act No. 311/2006 Coll (Fuel Act) implements the European legislation and regulates the requisites for composition and quality of fuels, sales and release of fuels and licensing and evidence of the gas stations. The Fuel Act includes LNG as a type of fuel, which is subject to regulation. The state administration in the field of fuels is supervised by the MIT and the Czech Trade Inspection.

Pursuant to the Fuel Act, every producer, importer, exporter or distributor of fuels has obligations to report the amounts of the fuels handled thereby to the MIT each year. The construction and operation of gas stations require special conditions to be met and a special approval procedure by MIT.

Production and other activities (purchase, sale and storage) related to LNG are subject to licensing pursuant to the Trade Licensing Act and subject to certain qualifications to be met by the responsible representative of the applicant. The licence is granted by the Trade Licence Office pursuant to the Trade Licensing Act.

- 24** Describe any regulation of the prices and terms of service in the LNG sector.

Pursuant to the Fuel Act, fuels (including LNG) must comply with quality and composition requirements set forth by the special Czech regulations. Prices for LNG are not subject to special regulation.

#### Mergers and competition

- 25** Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

On the national level, the only administrative body responsible for anti-competitive practices is the Office for the Protection of Economic Competition (the Antitrust Office). If trade between member states could be affected, the European Commission may act in parallel with (or instead of) the Antitrust Office.

- 26** What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

There are no sector-specific provisions governing anti-competitive practices in the natural gas sector and the Antitrust Office applies the relevant provisions of Act No. 143/2001 on the Protection of Economic Competition, as amended (the Antitrust Act). If trade between member states could be affected, the Antitrust Office can also apply articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) (formerly articles 81 and of the EC Treaty). The Antitrust Office's decisions are in line with the case law of the European Union's bodies (in particular, the European Commission and the Court of Justice of the European Union).

- 27** What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

The Antitrust Office can initiate an investigation upon receipt of a complaint or at its own instigation. It can request information necessary for conducting the investigation from any entity operating on the market or from state bodies (eg, ERO).

Upon completion of proceedings, the Antitrust Office may issue a decision prohibiting further performance of an anti-competitive agreement or practice or a decision prohibiting the continuance of abusive behaviour. The Antitrust Office is further empowered to impose fines or remedial measures. In certain circumstances, the Anti-

#### Update and trends

Pursuant to the state energy policy, there are several major tasks to be implemented in the near future, of which we would like to mention the following: increasing the diversification of gas supplies (increase of supply from countries other than Russia), strengthening natural gas transit and transport in the east-west axis and supporting the development of natural gas transit and transport in the north-south axis (including the possibility of using LNG transported to the Baltic Sea – Swinoujście, Poland or the Adriatic Sea – Adria, Croatia), increasing the capacity of gas underground storage facilities, constructing cross-border transport pipes (in particular the interconnection of the gas transportation system with the Polish and Austrian systems) and ensuring the full reversibility of gas flow.

By the end of 2011, the MIT intends to publish the investment plans report, the contemplated development of underground storage facilities and, should it prove to be necessary, the construction tenders as well. It should be mentioned that by 2015, the Czech underground storage capacity must amount to at least 40 per cent of annual natural gas consumption.

trust Office can terminate the proceedings by imposing on the parties to the proceedings commitments proposed during the proceedings, provided they are sufficient for the protection of competition and the harmful situation would be eliminated by their fulfilment.

As already mentioned, the Antitrust Office is empowered to apply articles 101 and 102 of the TFEU, in which case the Antitrust Office can require that an infringement be brought to an end, order interim measures, accept commitments or impose fines.

- 28** 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?

All transactions that are considered concentrations within the meaning of the Antitrust Act (ie, mergers, acquisitions of control over another undertaking or another undertaking's enterprise or a part thereof, establishment of joint control over an undertaking that performs on a lasting basis all functions of an autonomous economic entity) fall under mandatory notification with the Antitrust Office, provided the parties to such transaction meet one of two turnover thresholds:

- the total net turnover of all undertakings concerned achieved in the last accounting period in the market of the Czech Republic exceeds 1.5 billion koruna and each of at least two of the undertakings concerned achieved in the market of the Czech Republic in the last accounting period a net turnover exceeding 250 million koruna; or
- the net turnover achieved in the last accounting period in the market of the Czech Republic exceeds 1.5 billion korunas and at the same time, the worldwide net turnover in the last accounting period of another undertaking concerned exceeds 1.5 billion korunas in the case of a concentration in the form of:
  - a merger – by at least one of the parties to the merger;
  - acquisition of control over an enterprise or part thereof – by the acquired enterprise or part thereof;
  - acquisition of control over another undertaking – by the undertaking over which control is acquired; or
  - establishment of joint control over an undertaking that performs all functions of an autonomous economic entity on a lasting basis – by at least one of the undertakings establishing the joint venture.

There is no time limit for notification, but a concentration that requires mandatory notification to the Antitrust Office cannot be implemented before the date on which the approval decision

becomes final (ie, the shares or enterprise or joint control over a fully functioning joint venture cannot be acquired and control cannot be exercised).

After the initiation of proceedings, the Antitrust Office first assesses whether the notified concentration is subject to its approval. If the concentration is not subject to approval by the Antitrust Office, a decision to that effect should be issued within 30 calendar days of the initiation of proceedings. In cases where the concentration is subject to approval but will not result in a substantial distortion of competition, the Antitrust Office shall issue a decision approving the concentration within the aforementioned deadline. If the Antitrust Office finds that the concentration raises serious concerns that it is a significant impediment to competition, in particular because it would create or strengthen a dominant position of the undertakings concerned or any of them, the Antitrust Office informs the parties to the proceedings of this fact within the stipulated deadline and informs them that it is continuing the proceedings. If the Antitrust Office informs the parties to the proceedings in writing that it is continuing the proceedings, it shall be obliged to issue a decision within five months of the initiation of proceedings. If the Antitrust Office does not issue a decision on the concentration notification within the stipulated deadlines or fails to inform the parties in writing that it is continuing the proceedings, the Antitrust Office shall be deemed to have approved the concentration upon the lapse of the aforementioned deadlines.

Mergers in the gas sector (like other mergers) require registration by a commercial court to ensure compliance with general Czech corporate laws.

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

Although there are generally no applicable rules, we should repeat that special rules apply to prices for natural gas transportation and distribution, which are regulated on the basis of decisions of the ERO; please note, however, that any entity operating in the regulated sectors, including certain areas of the gas market, must set its prices in full compliance with the relevant decisions and methodology issued by the sector regulator, namely by the ERO in the case of energy sector.

**30** 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 above-mentioned rules governing merger control and rules arising from the general Czech corporate laws, there are no specific rules governing acquisition of shares in gas utilities or corporate governance regulations on asset transfers applicable to gas utilities.

### International

**31** Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

Foreign companies enjoy the same treatment as local entities when acquiring interests in Czech gas utility companies.

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

The Czech Republic is an EU member state and therefore its regulatory policy is mainly influenced by EU legislation.

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

There is no special legislation pertaining to cross-border natural gas transactions. In general, cross-border market for natural gas is regulated by the European Community Regulation No. 715/2009, on conditions for access to the gas transmission networks. Cross-border sales and deliveries of natural gas are transacted pursuant to bilateral agreements between the parties and the availability of cross-border capacity. Also, the Rules for Organising the Gas Market and the Operational Code of the Operator of the Transportation System (which set out, for instance, rules for nomination of the amount of natural gas to be supplied into or taken from the transportation system) are applicable.

Pursuant to the European Union Regulation No. 994/2010, certain measures for the ensuring of a secure gas supply have been adopted, which shall be binding on all member states; the regulation sets forth extraordinary measures to be implemented when the market can no longer deliver the required volume of gas, including cross-border sales or deliveries.



**Václav Rovenský**  
**Tomáš Sequens**

Jungmannova 24  
110 00 Prague 1  
Czech Republic

Tel: +420 224 103 316  
Fax: +420 224 103 234  
[www.ksb.cz](http://www.ksb.cz)

**Transactions between affiliates**

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

As in all transactions between affiliates, under Czech corporate laws (in particular the Commercial Code) and Czech tax laws, transactions between a natural gas utility and its affiliates must be at arm's length.

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

The consequences of breaches of obligations and restrictions concerning transactions between affiliates arising from Czech corporate laws and Czech tax laws are set forth in the Czech Commercial Code in particular and the relevant Czech tax regulations. In general, affiliate restrictions are enforced via the courts; transactions between affiliates, which are forbidden, shall be declared invalid. See also question 27 regarding the powers of the Antitrust Office to preclude or remedy anti-competitive practices of natural gas utilities.



## Annual volumes published on:

- |                                   |                              |
|-----------------------------------|------------------------------|
| Air Transport                     | Merger Control               |
| Anti-Corruption Regulation        | Mergers & Acquisitions       |
| Arbitration                       | Mining                       |
| Banking Regulation                | Oil Regulation               |
| Cartel Regulation                 | Patents                      |
| Climate Regulation                | Pharmaceutical Antitrust     |
| Construction                      | Private Antitrust Litigation |
| Copyright                         | Private Equity               |
| Corporate Governance              | Product Liability            |
| Dispute Resolution                | Product Recall               |
| Dominance                         | Project Finance              |
| e-Commerce                        | Public Procurement           |
| Electricity Regulation            | Real Estate                  |
| Environment                       | Restructuring & Insolvency   |
| Franchise                         | Right of Publicity           |
| Gas Regulation                    | Securities Finance           |
| Insurance & Reinsurance           | Shipping                     |
| Intellectual Property & Antitrust | Tax on Inbound Investment    |
| Labour & Employment               | Telecoms and Media           |
| Licensing                         | Trademarks                   |
| Life Sciences                     | Vertical Agreements          |

**For more information or to  
purchase books, please visit:  
[www.gettingthedealthrough.com](http://www.gettingthedealthrough.com)**



Strategic research partners of  
the ABA International section



The Official Research Partner of  
the International Bar Association