

Greece

Yannis Kelemenis & Konstantina Soutati

Kelemenis & Co

1 Policy and law

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

As a member state of the EU, Greece has been subject to the legislative measures for the liberalisation of the EU electricity industry that began in the 1990s. Statute 2773/1999 on the liberalisation of the Greek electricity market (the Electricity Law) was passed in December 1999 and aligned Greek law with Directive 96/92/EC. The Electricity Law introduced the new key entities of the sector, namely the regulator (RAE) and the transmission system operator (HTSO). It also set in train the unbundling of the Public Power Corporation (PPC), the then vertically integrated electricity undertaking. The new regulatory framework allowed for competition in electricity generation and supply, while the transmission and distribution systems remained monopolies under the management of the HTSO and the PPC respectively. Ownership of both systems remained with the PPC.

Even though an impressive number of generation licences were issued, the new legislation failed to bring about liberalisation: new competitors did not, in the end, enter the market; no new power plants were constructed; and the PPC retained its monopolistic hold on the market. Statutes 2837/2000 and 2941/2001 amended the Electricity Law, yet it was Statute 3175/2003 that made the most significant changes by adopting some of the measures that were introduced in Directive 54/2003/EC (the second electricity directive). Statute 3175 provided that as of 1 July 2004 all non-household consumers would become eligible customers and that as of 1 July 2007 all consumers would become eligible customers. It also amended provisions of the Electricity Law that had proved to be barriers to competition: suppliers were no longer required to own generating capacity but only to show that they had secured the respective capacity of electricity production from generators inside the EU; a capacity payments system was introduced aiming to encourage financing from credit institutions by securing future revenue through a market for tradable capacity certificates or capacity availability contracts that obliged generators to provide ancillary and balancing services to the HTSO; the day-ahead market became obligatory for all generators and suppliers who wanted to buy or sell electricity the following day and created a market that was fundamentally based on the 'pool model' used in the UK during the 1990s; and new measures were introduced to ensure a more effective unbundling and transparency of accounts.

Despite these legislative measures and the steady increase in electricity demand, the Greek electricity market did not open up to competition: of the 12 generation licences that were granted for new gas-fired power plants between 2001 and 2005, only two reached construction. Partly because of this failure and partly because of the need to fully transpose Directive 2003/54/EC into national legislation, Statute 3426/2005 on the acceleration of electricity market liberalisation came into force on 22 December 2005. It was soon followed, in June 2006, by Statute 3468/2006, which aligned Greek

law with Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources and introduced the thresholds set by the directive. In 2008, the installed capacity producing electricity from renewable energy sources in Greece amounted to more than 1GW approximately which still meets only a small percentage of the country's national electricity demand. Two recent legislative measures (Statutes 3734/2009 and 3851/2010 modifying Statute 3468/2006) have entered into force aiming at the acceleration of the renewable energy source (RES) licensing process. In particular, Statute 3851/2010, which came into force on 4 June 2010, sets out the national targets for RES production in line with Directive 2009/28/EC so that by 2020 RES covers 20 per cent of the gross final energy consumption.

PPC still enjoys a dominant position in the market: according to its interim financial statements for the period from 1 January to 30 June 2010, PPC's electricity generation (including electricity imports) in mainland Greece corresponded to 77 per cent of the total demand versus 85.4 per cent of the previous year.

Following the enactment of Statute 3845/2010 ratifying and transposing the provisions of the May 2010 Memorandum of Understanding entitled 'Specific Economic Policy Conditionality' signed by Greece, IMF, ECB and the European Commission (MoU), the Greek government is obligated to take up measures towards better safeguarding the opening up the electricity market and aligning Greek policy with the EU *acquis communautaire*. The transposition of the third liberalisation package into Greek legislation is still pending, although steps have been taken towards drafting the relevant bills.

2 Organisation of the market

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

The Greek market is split into two different systems: the mainland grid and the 'non-interconnected islands', which include the islands of the Aegean Sea, Crete and Rhodes and have their own autonomous networks. Competition is now open in the sectors of electricity generation and supply in the mainland grid and as of 1 July 2007 this covers all consumers including households. Despite the opening up of generation and supply, a competitive market is not in place. Although some progress has recently been made, acceleration is awaited following the revised MoU of August 2010 according to which the Greek government must enable the effective liberalisation of the wholesale electricity market. In summary, Greece is expected to undertake, among others, the following:

- to open up the lignite-fired electricity generation to third parties in line with EU requirements by adopting a plan for phased transitory cost-based access to lignite-fired generation, taking into account the decommissioning of the power plants scheduled under the government's Energy Plan to meet the 20-20-20 target;

- to adopt a plan to either award the hydro reserves management to an independent body or to assign this role to the independent system operator;
- to provide a mechanism ensuring that the energy component of regulated tariffs reflects, gradually and at the latest by June 2013, wholesale market prices, except for vulnerable consumers;
- to provide a revised definition of vulnerable consumers and a tariff for this category of consumer;
- to ensure that network activities are unbundled from supply activities as foreseen in the second and third energy liberalisation packages and ensure the creation of fully unbundled electricity and gas transmission system operators by March 2012;
- to identify the assets and personnel associated with the electricity transmission system and the electricity distribution system; and
- to transfer to RAE all regulatory powers assigned to EU energy regulators in the third energy liberalisation package and adopt measures which will guarantee its independence.

The transmission and distribution systems have remained monopolies under the management of the HTSO; however in the case of the distribution system the transfer of management to the HTSO is yet to happen despite a statutory provision to this effect as of 1 July 2007. Ownership of both systems remains with the PPC.

Trading in the form of selling and buying electricity on a wholesale market is undertaken through the day-ahead market run by the HTSO. The day-ahead market has become obligatory for all generators and suppliers who want to buy or sell electricity the following day and has created a market that is fundamentally based on the 'pool model' used in the UK during the 1990s. In view of opening up the market of the non-interconnected islands to competition, RAE has published a draft proposal of the Distribution Grid Code on 6 August 2010, the public consultation of which will end on 29 October 2010.

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

According to article 9 of the Electricity Law, the construction of a power plant and the generation of electricity require a generation licence. Such licence is granted in accordance with Ministerial Decision 17951/2000 (Licensing Regulation) by the minister of environment (the line minister for energy since October 2009) following an opinion of RAE. The Electricity Law makes it clear (article 9(5)) that a generation licence does not release its holder from the obligation to acquire other licences or permits stipulated in other pieces of legislation (for example, construction permits, operation licences, environmental permits, land planning permissions, etc). In fact, the licensing regime that has emerged following the opening up of the Greek electricity market has been tormented by the many different permits and licences required of the generation licensee.

An exemption from the obligation to obtain a generation licence may be granted by the minister of environment (article 10 of the Electricity Law) in connection with reserve capacity facilities; power plants of a capacity of up to 2MW that are used for educational or research purposes; power plants that are constructed by the CRES (the Centre for Renewable Energy Sources) for certification and measuring purposes; and any power plant of a capacity of up to 20kW.

4 Interconnection policies

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

Greek legislation has fully transposed the provisions of Directive 2003/54/EC regarding third-party access to the transmission grid. However, HTSO has failed to fully implement the transparency requirements set by Regulation 1228/2003 and, as a result, the European Commission has addressed a reasoned opinion under article 258 (formerly 226) of the Treaty to the Greek government. RAE has further noted, in its June 2010 Report that followed the IG Transparency Report, the measures that need to be taken by the HTSO so that the HTSO complies with EU rules.

The HTSO is responsible for granting such access on non-discriminatory terms and does so in accordance with article 19 of the Electricity Law and with the Grid and Power Exchange Code (Ministerial Decision 8311/2005, which has only recently entered into force). The Grid and Power Exchange Code provides, inter alia, for the terms, conditions and criteria of access to the grid in a non-discriminatory, transparent and objective manner between network users. The HTSO may refuse access to the grid where it lacks the necessary capacity, in which case it must give substantiated reasons for such refusal.

5 Alternative energy sources

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

Statute 3468/2006 on the generation of electricity from renewable energy sources (RES) and from cogeneration, which entered into force in June 2006, transposed Directive 2001/77/EC into Greek legislation and set out de novo the entire legal framework for RES and cogeneration. To overcome the administrative barriers that have arisen in the process of operating a RES plant, Statute 3851/2010 provides that the RES production licence is henceforth an administrative confirmation of the project's feasibility, namely, an overall approval of the project's technical-economic efficiency. Furthermore, under Statute 3851/2010 the production licence will no longer be granted by the minister but by RAE. The new delegation of powers aims at reducing the overall time required for the issue of a production licence to two months following the submission of a complete file by the applicant. In addition, the environmental licensing is no longer part of the procedure to obtain a production licence but is granted at a subsequent stage. Indeed, RAE has already issued several production licences that had been pending since 2007. Statute 3851/2010 further provides financial incentives such as new feed-in tariffs (excluding PV-generated energy, which is subject to the feed-in tariffs introduced by Statute 3734/2009).

The minister for finance has recently presented a draft bill of the new Development Law that will replace Statute 3299/2004, which provided for investment incentives regarding, inter alia, RES. However, due to the controversy it has raised the draft bill is now being reconsidered and it is not currently clear whether RES (especially PV plants) will benefit from state aid support. Grant applications filed before 29 January 2010 still fall under the provisions of the former legislative regime of Statute 3299/2004, as provided by article 10 of Statute 3816/2010, and must be concluded by 31 March 2011.

Notwithstanding the above, the government has circulated a draft Ministerial Decision regarding the RES installation and operation licensing procedures to promote RES fast-track licensing for projects falling under the scope of article 9 of Statute 3775/2009 (ie business plans with a budget above €200 million or with a budget above €75 million that create 200 new job vacancies or of investments in innovative technologies amounting to at least €1 million per annum).

6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

There is a bias towards renewable energy sources, primarily wind and solar energy. To this end, attractive feed-in tariffs have been introduced. Statute 3851/2010 further provides that the minister of environment must issue a decision regarding the so-called National Action Plan regarding the measures that need to be taken so that Greece meets the targets set by Directive 2009/28/EC. On 15 September 2010, the minister of environment issued a decision on the proportion of installed capacity per RES technology and per category of producers and its phasing from 2014 to 2020 (excluding projects that will be subject to fast track licensing under article 9 of Statute 3775/2009).

	2004	2020
Hydroelectric	3650 MW	4650 MW
Small (0-15MW)	250 MW	350 MW
Big (>156MW)	3400 MW	4300 MW
Geothermal	20 MW	120 MW
PV	1500 MW	2200 MW
Plants installed by Professional Farmers under article 15 para 6 of Statute 3851/2010	500 MW	750 MW
Plants installed on building and their terraces under article 15 paragraph 6 of Statute 3851/2010	200 MW	350 MW
All other plants	800 MW	1100 MW
Solar-thermal	120 MW	250 MW
Wind farms (including offshore wind farms)	4000 MW	7500 MW
Biomass	200 MW	350 MW

7 Government policy

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

There are no plans of any kind for developing nuclear power in Greece.

Regulation of electricity utilities – transmission**8 Authorisations to construct and operate transmission networks**

What authorisations are required to construct and operate transmission networks?

The Greek transmission grid is a monopoly owned by the PPC and managed by the HTSO, the latter being 51 per cent state-owned and 49 per cent owned by the generators (for the time being still PPC). Both the HTSO and the PPC have been granted a licence corresponding to the rights and obligations arising from their being, respectively, the owner and the manager of the transmission network (article 12 of the Electricity Law). Both licences are granted by the minister of environment following an opinion of RAE. Given that they both relate to the regulation of a monopoly, what is crucial about them is the obligations and duties arising from these licences. Indeed, chapter 4 of the Electricity Law (articles 12 to 20) and the secondary legislation relating to the transmission network (for example, the Grid and Power Exchange Code) deal in detail with the development, maintenance, management and operation of the high-voltage grid. Crucially, in addition to acting as a system operator, the HTSO also acts as a market operator and a clearing house that settles the accounts between market participants on a daily basis. Greece, however, is obligated under the revised MoU with IMF, ECB and the European Commission to ensure that network activities are in line with the third energy liberalisation package and to bring about a fully unbundled electricity transmission system operator by March 2012.

9 Eligibility to obtain transmission services

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

According to article 15 of the Electricity Law, access to the transmission grid may be granted to licenced generators and suppliers, to those exempted from the obligation to hold such licences and to eligible customers. The terms and conditions for the provision of transmission services and access to the transmission grid are regulated in the Grid and Power Exchange Code (Ministerial Decision 8311/2005), which is intended to procure, inter alia, the non-discriminatory and objective use of the system.

10 Government incentives

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

Greece has in recent years enacted various laws designed to foster growth in certain sectors of the economy, encourage investment in rural areas and attract foreign funds. However, Statute 3299/2004, which introduced substantive and procedural changes to the regime of state aid to corporations and provided for various types of incentives, is no longer in force and the new regime is still under consideration.

11 Rates and terms for transmission services

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

The methodology used by the HTSO for determining such rates requires the prior approval of RAE. On the basis of such methodology, the HTSO makes a proposal on the rates for the provision of transmission services and the minister of environment approves these rates following an opinion of RAE. The general rule for deciding such costs is the determination of the various running costs of the HTSO plus a moderate profit. The terms for the provision of transmission services are set out in the Grid and Power Exchange Code.

12 Entities responsible for assuring reliability

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

The Greek transmission grid is operated by the HTSO but the ownership of the grid has stayed with PPC, the formerly vertically integrated electricity undertaking. Article 15 of the Electricity Law reflects article 9 of Directive 2003/54/EC and provides for responsibilities such as ensuring the long-term ability of the system and non-discrimination between system users, managing energy flows and interconnections on the system, ensuring ancillary services, contributing to security of supply, etc. To this end, the HTSO prepares annually a study on the transmission grid that deals with the development needs of the transmission system in the five years following each study. The particular scope of the study and the process for its approval (once approved, the study becomes the system's Development Plan) are set out in the Grid and Power Exchange Code (section IX, articles 261 et seq). Under article 12(3) and (4) of the Electricity Law, as well as under the terms of its licence, the PPC, owner of the transmission and distribution networks, is obliged to maintain the grids and implement the works required for their development according to the terms of its agreement with the HTSO, as approved by the minister of environment (Ministerial Decision 8219/2001), the Grid and Power Exchange Code and the instructions and requests of the HTSO. The remuneration of the PPC for these works and services is specified in article 18(4) of the Electricity Law and article 308 (annual cost of the system) of the Grid and Power Exchange Code. Besides the HTSO and PPC, RAE has a role to play in contributing to the system's reliability because monitoring and supervising the

compliance of the HTSO and PPC with the terms of their licences and ensuring security of supply and the unbundling of accounts are part of the core tasks of the Greek energy regulator.

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

Before the enactment of Statute 3426/2005, the HTSO operated only the transmission grid, while the distribution network was both owned and operated by PPC. Statute 3426 made use of article 17 of Directive 2003/54/EC, which provides for a combined transmission and distribution system operator, and provided that the HTSO would also become the distribution system operator as of 1 July 2007 (articles 21 and 22). To this end several steps should be taken, such as the granting of a distribution licence to the HTSO by the minister of environment following an opinion of the RAE, the renaming and restructuring of the HTSO to the Hellenic Transmission and Distribution System Operator (HTDSO), etc. Nonetheless, little progress has been made even though 1 July 2007 has already passed.

14 Access to the distribution grid

Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

According to article 22(a) of the Electricity Law, access to the distribution grid is granted to licenced generators and suppliers, to those exempted from the obligation to hold such licences and to eligible customers who, as of 1 July 2007, include household consumers. The terms and conditions for access to the distribution grid are provided in the Distribution Grid Code (article 23 of the Electricity Law) which is yet to be issued.

15 Rates and terms for distribution services

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

The methodology used by the Distribution System Operator (DSO) for determining such rates requires the prior approval of RAE. On the basis of such methodology, the DSO makes a proposal on the rates for the provision of transmission services and the minister of environment approves these rates following an opinion of RAE. The general rule for deciding such costs is the determination of the various running and maintenance costs of the DSO plus a moderate profit.

Regulation of electricity utilities – sales of power

16 Approval to sell power

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

The sale of power to customers requires a supply licence that is issued in accordance with the Licensing Regulation by the minister of environment following an opinion of the RAE. The issue of a licence does not release its holder of the obligation to acquire other licences or permits stipulated in other pieces of legislation, yet this is more relevant in the case of a generation licence which is linked to various other permits and licences (for example, construction permits, operation licences, environmental permits, land planning permissions, etc).

Any natural or legal person or joint venture having its registered seat in an EU member state may apply for a supply licence at any time. In accordance with article 3 of the Licensing Regulation (Ministerial Decision 17951/2000 as in force), the application for a supply licence is submitted to the RAE together with the necessary paperwork, data and application fee. At the same time, the applicant sub-

mits a copy of the application and the attached documentation and data to the minister of environment. Within a period of two months from the submission of the application, the RAE may request from the applicant to provide, within a specified period, further information that is considered necessary either by the RAE or by the minister of environment. The minister of environment, following the RAE's opinion, may reject the application if the applicant has not submitted the requested information on time. The application procedure is considered to have been completed if the applicant submits the requested information on time and the RAE does not request further information within one month. However, if no notice is communicated to the applicant requesting the submission of additional information, it is deemed that the RAE considers the application procedure to have been completed.

According to article 10 of the Licensing Regulation, the RAE submits its opinion to the minister of environment within three months after the application has been completed and then communicates a copy of it to the applicant. The RAE's opinion may include proposals relating to the terms, criteria and restrictions that should be included in the licence. Article 11 of the Licensing Regulation provides that the minister of environment issues a decision on the application within one month from the submission of the RAE's opinion. The supply licence is effective as of the date it was issued by the minister or as of the date indicated in the minister's decision.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

As of 1 July 2007, all consumers have become eligible customers and are therefore subject to the power sales tariffs applicable to eligible customers in line with the Supply Code (Ministerial Decision 4524/2001) issued under article 27 of the Electricity Law. Said code provides that, the market having opened up, suppliers are free to decide their tariffs and pricing and the terms of the supply contracts (article 6).

However, the Supply Code also provides that PPC's tariffs must be approved by the minister of environment following an opinion of the RAE for as long as PPC covers more than 70 per cent of the domestic electricity consumption (article 14), which is the case today as PPC still covers more than 90 per cent of domestic consumption. Furthermore, the Supply Code (article 13) provides that in the case of the 'big suppliers' (those covering more than 40 per cent of the country's total electricity consumption), the minister of environment, following an opinion of the RAE, may intervene and amend the tariffs and the general terms of business published by the big supplier.

However, since PPC's retail tariffs remain regulated, there is admittedly a risk that they do not reflect adverse changes in the cost of the wholesale market and entail cross subsidies between different tariff groups. The European Commission has already addressed a reasoned opinion to Greece on this matter and independent energy retail providers have lodged an application before the Greek supreme administrative court claiming that PPC tariffs entail their exclusion from the market due to PPC's policy of cross subsidies. Following the revised MoU of August 2010, which provides for the Greek government's obligation to ensure that the energy component of regulated tariffs gradually reflects wholesale market prices except for vulnerable consumers, Ministerial Decision 16027/2010 was issued determining the vulnerable customers on a stricter basis (by introducing indicators such as the consumer's annual income and other social factors such as number of children, unemployment, etc).

18 Rates for wholesale of power

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

A day-ahead market, driven by the 'system marginal price', operates under the auspices of the HTSO and determines the rates of all

wholesale power sold in the Greek power market.

19 Public service obligations

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

Greek electricity legislation is approximately the same as article 3 of Directive 2003/54/EC regarding public service obligations (PSO). Indeed, the Electricity Law provides that electricity suppliers are subject to public service obligations and Ministerial Decision 12924/2007 determined as a PSO the supply of electricity in the non-interconnected islands under the same tariffs regulated for mainland Greece and the discount tariffs for families of at least four children. However, Greece has failed to notify these measures to the European Commission as provided by Directive 2003/54/EC and has received a reasoned opinion clearly stating that under the Commission's opinion the above measures could not be justified as PSO and entail market barriers. In view of the August 2010 MoU, it is doubtful that the above PSO will remain in force for too long.

Regulatory authorities

20 Policy setting

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

Regulatory competencies are shared between the minister of environment and the RAE, the latter having been assigned far more decisive powers following the introduction of Statute 3851/2010. The minister decides on all strategic matters, oversees the country's energy policy, security of supply and environmental protection, grants licences for any activity relating to the generation, transmission, distribution and supply of electricity, and is wholly responsible for both primary and secondary legislation (article 3 of the Electricity Law).

21 Scope of authority

What is the scope of each regulator's authority?

The RAE supervises all sub-sectors of the energy market, monitors compliance with licences, oversees the unbundling of accounts and the enhancement of competition in the energy market, sanctions licences for licence breaches, and gives its opinion to the minister on a wide variety of issues including applications for the issue of licences, etc (article 5 of the Electricity Law). Even though the RAE has the functions set out in article 23 of Directive 2003/54/EC, its role remains an advisory one to the minister of environment, who has the final word on all legislation, primary and secondary, and on the granting of licences.

22 Establishment of regulators

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

Even though five regulators (the Hellenic Data Protection Authority, the Greek Ombudsman, the Hellenic Authority for Information and Communication Security and Privacy, the Greek National Council for Radio and Television, and the Supreme Commission for Personnel Selection) have been stipulated in the Greek Constitution (article 101A), most Greek regulators (of which there are about 15) have been established by primary laws.

The RAE has been set up in accordance with the Electricity Law (article 4) and consists of seven members. Of these, three (its chairman and two vice chairmen) are chosen and appointed by the council of ministers, while the remaining four are appointed by the minister of environment. The RAE's independence is secured through the express guarantees for personal and operational independence that its seven members enjoy. Crucially, no member of the RAE can be

removed during his or her term of office. Moreover, neither members nor their spouses are allowed to have any interest in any energy undertaking while in office and for three years after its end.

23 Challenge and appeal of decisions

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

The RAE's decisions, including those involving sanctions, may be challenged before the RAE's competent organs within 30 days from the day of service or the day the decision came to the knowledge of the interested party (article 5 of the Electricity Law). The RAE's final decision is then subject to an appeal (the 'application for judicial review'), at a first instance before the Athens Administrative Court of Appeal and at a second and final instance before the Council of State, the supreme administrative court in Greece. In either procedure (that is, before both the Court of Appeal and the Council of State), the application for judicial review must be heard within two months of its filing and a judgment must be given four months after the hearing. The grounds for appeal can cover the full range of substantive and procedural objections that can be raised against any enforceable administrative order.

Statute 3426/2005 has fully transposed the review procedures set out in Directive 2003/54/EC including the one in article 23(5), under which any party having a complaint against the HTSO, the distribution system operator or the owner of the transmission and distribution grids may refer the complaint to the RAE, which, acting as dispute settlement authority, shall issue a decision within two months of receipt of the complaint. This period may be extended by two months where additional information is sought by the RAE. Its decision may only be overruled by the Council of State.

Acquisition and merger control – competition

24 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

The entities involved in acquisition and merger control are:

- European Commission: the commission has the power to review concentrations and investigate mergers, acquisitions, structural joint ventures and other transactions that bring about a lasting change of control and meet the jurisdictional thresholds set out in article 1(2) and (3) of Regulation 139/2004 on the control of concentrations between undertakings. Even so, the Hellenic Competition Commission (HCC), an independent regulatory body with administrative and financial autonomy which is supervised by the minister of development, will submit its views on the transaction to the European Commission.
- HCC: depending on the relevant jurisdictional thresholds, the transaction may be subject only to a national merger control regime, in which case the HCC shall be responsible for checking. HCC shares some concurrent powers with the RAE regarding the monitoring of competition, yet it is the HCC that, according to article 1(20) of Statute 2837/2000 on competition, the RAE, etc, has the final word on merger control and on the application of Statute 703/1977 on the control of monopolies and oligopolies and the protection of free competition.
- RAE: the regulator monitors market competition and has a decisive role to play in monitoring the unbundling of accounts. It also considers whether the transaction raises regulatory issues in case it is called upon, under the Licensing Regulation and the general terms of the licence, to evaluate any change of shareholding control in any licence holder

- Hellenic Capital Markets Commission (HCMC) or local prefecture: depending on whether any of the parties involved in the transaction is an undertaking listed at the Athens Stock Exchange or not, a merger has to be notified to the involved undertakings' supervising authorities (for listed companies, this is HCMC and for non-listed, the local prefecture) and go through the standard merger reporting procedures and approval requirements.

25 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

Statute 703/1977 on the control of monopolies and oligopolies and the protection of free competition regulates competition issues arising from mergers and acquisitions. The provisions of the statute are enforced by the HCC and apply to concentrations in general, including any kind of merger between two or more undertakings, to the acquisition of direct or indirect control of an undertaking by a person controlling at least one undertaking, and to joint ventures. A concentration is subject to:

- pre-merger notification if the parties have an aggregate worldwide turnover of at least €150 million and at least two participating undertakings have an aggregate turnover exceeding €15 million in Greece; and
- post-merger notification if the market share of the parties amounts to at least 10 per cent of the relevant market in Greece, or if the aggregate turnover of the parties in Greece comes to at least €15 million.

If the parties complete the merger or the acquisition before clearance by the HCC, a fine of at least €30,000 and of up to 15 per cent of the worldwide aggregate turnover of the undertaking under an obligation to notify may be imposed. Completion of the merger or the acquisition before HCC's approval also constitutes a criminal offence for the legal representative of the breaching undertaking.

According to article 4(d) of Statute 703/1977, the HCC must decide within one month of its notification whether a concentration falls within the scope of the statute and whether it raises concerns for restricting competition. If the HCC rules that there is a case, its chairman must order an investigation. The HCC's decision approving or disallowing a concentration must be issued within 90 days from its initial notification. If a decision has not been issued within this time limit, the concentration is deemed to have been approved.

26 Prevention and prosecution of anti-competitive practices

Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

The HCC and RAE have concurrent powers to prevent or prosecute anti-competitive or manipulative practices in the electricity sector. According to article 1(20) of Statute 2837/2000, the HCC has the final word on all matters referred to it in connection with Statute 703/1977 on the control of monopolies and oligopolies and the protection of free competition. Nonetheless, the RAE plays a crucial role when it comes to the unbundling of accounts and cross-subsidies. This is so not only because the Electricity Law assigns such tasks to the RAE but also because the Greek electricity market still remains monopolistic and dominated by the PPC.

27 Determination of anti-competitive conduct

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

Articles 101 and 102 of the Treaty on the Functioning of the European Union are quite significant and have been fully transposed into

the country's legislation. Thus any transactions which aim to prevent, restrict or distort competition (for example, by directly or indirectly fixing purchase or selling prices or any other trading conditions; by limiting or controlling production, markets, technical development, or investment; by sharing markets or sources of supply; by applying dissimilar conditions to equivalent transactions with other trading parties placing them at a competitive disadvantage; or by making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations) may all be declared void. Likewise, any abuse of a dominant position in the market or in a substantial part of it is likely to be disallowed.

28 Preclusion and remedy of anti-competitive practices

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

The authority is twofold: to declare that the practice breaches competition law and should be discontinued (in case a transaction is involved, the agreement will be declared null and void) and to impose financial penalties.

Pursuant to article 9(1) of Statute 703/1997, as amended by Statute 3373/2005, the HCC may undertake an audit in connection with anti-competitive or manipulative practices at its own motion or following a complaint by the Ministry of Development. Depending on the outcome of the audit, the HCC may impose a penalty which can amount to up to 15 per cent of the company's gross annual income.

International

29 Acquisitions by foreign companies

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

There are no barriers to companies from other EU member states. Such companies are subject to the same rules as those applicable to Greek companies. It should be noted, however, that any such foreign company which holds a licence for performing activities in the electricity sector in another member state still needs to obtain a Greek licence, and any change over the control of the licence holder needs to be notified to the RAE and to the minister of environment, who may disapprove a change of such control.

30 Cross-border electricity supply

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

The HTSO regularly conducts auctions for the allocation and assignment of interconnection capacity rights for energy exports to Italy and for energy imports from the countries north of the Greek border (Bulgaria, FYR Macedonia and Albania) on a yearly, monthly and daily basis. In the case of imports from the countries north of the Greek border, monthly and daily auctions take place on a regular basis from Bulgaria and FYR Macedonia and on an irregular basis from Albania.

A bidder must:

- register with the users' registry maintained by the HTSO according to articles 1 and 2 of the Grid and Power Exchange Code (article 2 states the paperwork that needs to be submitted to the HTSO for registration);
- meet the criteria of article 312 of the Grid and Power Exchange Code, according to which a system user may be granted the right of access to interconnection capacity if he or she holds a supply licence for imports, exports and transit of electricity issued by the minister of environment;

Update and trends

The August 2010 MoU signed by Greece, IMF, ECB and the European Commission has set specific deadlines for Greece to align its energy policy with EU legislation and secure market opening.

- observe the formalities set out in the auction rules published by the HTSO – this includes obtaining a unique EIC code under the Energy Identification Coding Scheme and a duly completed and signed statement of acceptance; and
- participate in the electronic auction, provided he or she has, prior to the auction, submitted a participation bond in the form of a letter of guarantee, which must cover at least 20 per cent of the total offer that the bidder intends to make during the auction.

Transactions between affiliates**31 Restrictions**

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

According to article 30 of the Electricity Law, electricity utilities and their affiliates need to maintain separate accounts for each of their activities, whether these relate to generation, transportation, distribution or supply, and do so as if these accounts were maintained by different undertakings. This unbundling of accounts is meant to ensure that cross-subsidies, discriminatory practices and competition distortions are avoided. Under article 30(4) of the Electricity Law, electric-

ity utilities are obliged to report all their transactions with affiliated undertakings (undertakings in which they have a shareholding interest). It is stipulated that auditors of integrated electricity utilities shall audit the unbundled accounts as if these separate accounts belonged to different undertakings. Auditors should particularly specify in their report to the general meeting of the shareholders how the undertaking's rules on the unbundling of the accounts were applied and how the obligation to avoid cross-subsidies was observed.

32 Enforcement and sanctions

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

Electricity utilities need to specify the principles and the rules they apply to maintaining separate, unbundled accounts and submit these rules and principles for approval to the RAE so as to ensure that there are no discriminatory practices, such as cross-subsidies, on distortions of competition. Crucially, the annual accounts of electricity utilities, which have been approved by the general meeting of their shareholders, must be submitted to the RAE which retains the right to undertake inspections at any time to find out how electricity utilities comply with their obligation to maintain separate accounts.

Any licensee who breaches his or her obligation to unbundle their accounts and maintain them separately may be sanctioned according to article 33 of the Electricity Law. The penalty that may be imposed ranges from €150,000 to €3 million. Decisions regarding sanctions are reached following the hearing procedures set out in Presidential Decree 139/2001 on the RAE's internal organisational rules – a decree currently under review.

Kelemenis & Co.

Yannis Kelemenis
Konstantina Soutati

5 Tsakalof Street
106 783 Athens
Greece

Tel: +30 210 3612800
Fax: +30 210 3612820
www.kelemenis.com