Electricity Regulation

In 27 jurisdictions worldwide

Contributing editors
Earle H O'Donnell and Daniel Hagan

2015

GETTING THE DEAL THROUGH

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

First published 2003
Thirteenth edition
ISSN 1479-3210

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

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Switzerland

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Staiger, Schwald & Partner Ltd

1 Policy and law

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

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

The confederation may entirely legislate in the field of nuclear energy and the transmission and distribution of electricity, has far-reaching power in the field of hydropower generation and has the power to determine the general principles of the use of domestic and renewable energy. In addition, the cantons may regulate the remaining fields. The legislative framework is thus very fragmented. The relevant acts and ordinances at federal level are as follows:

- the Energy Act;
- the Ordinance on Energy;
- the Electricity Supply Act:
- the Ordinance on Electricity Supply;
- the Act on Nuclear Energy;
- the Ordinance on Nuclear Energy;
- the Act on Low and Heavy Current Electricity Utilities;
- the Ordinance on Low Current Electricity Utilities;
- the Ordinance on Heavy Current Electricity Utilities;
- the Ordinance on the Authorisation Procedure for Heavy Current Utilities;
- the Ordinance on Electric Low Current Products;
- the Ordinance on Electric Low Current Installations;
- the Ordinance on Electric Lines;
- the Act on Utilisation of Water Power;
- the Act on CO_2 Emission Reductions; and
- the Ordinance on CO_2 Emission Reductions.

The legislative framework for the electricity sector has substantially changed during the past few years. The main part of the Federal Act on Electricity Supply came into force on 1 January 2008 and its respective Federal Ordinance on Electricity Supply on 1 April 2008, together changing the shape of the electricity sector fundamentally.

The objective of this new legal framework is to ensure reliable and sustainable electricity supply and to liberalise the (previously closed) electricity market in two steps. First, end-consumers with an annual consumption of more than 100MWh have been granted free access to the market as from 1 January 2009. Second, all end-consumers, including households and other small-scale consumers, should be able to freely choose their electricity supplier (full market liberalisation). However, this step needs a parliamentary decision, being subject to an optional referendum. Full market liberalisation has been scheduled to be effective on 1 January 2014, but is delayed due to current works on a revision of the Energy Act and on the strategy to replace nuclear energy by renewable energies (Energy Strategy 2050; see 'Update and trends'). Today, it is expected that the full market liberalisation will take place in 2018.

2 Organisation of the market

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

Switzerland's electricity supply is secured by approximately 650 energy supply utilities and continues, therefore, to be very fragmented. However, since the new legislative framework for electricity supply provides for extensive regulatory efforts for utilities and, due to expected new market forces as a consequence of the liberalisation process, the number of companies active in the sector is likely to decrease in the coming years. In some cantons and municipalities, a single vertically integrated company is responsible for the entire supply chain (except the transmission of electricity, which is operated by the transmission system operator (TSO)), while in other cantons this activity is divided among a variety of companies. Furthermore, many of the energy supply companies are not only responsible for the supply of electricity, but also for the supply of water and gas.

As of 2012, the public sector holds 88.1 per cent of the electricity supply company capital, totalling around 5.5 billion Swiss francs, while the remaining approximately 12 per cent are held by private investors (of which 7.6 per cent are Swiss and 4.3 per cent are foreign).

In 2013, end-consumer electricity consumption totalled 59.3 billion kWh (2012: 58 billion kWh), and domestic producers generated a total of 68.3 billion kWh (2011: 68 billion kWh). Cross-border electricity trading is of major significance for Switzerland, both economically and in terms of supply security. In 2013, 36.2 billion kWh were imported and 38.6 billion kWh were exported. The electricity trading balance in 2013 amounted to around 327 million Swiss francs (2012: around 770 million Swiss francs).

At present, hydropower plants account for around 57.9 per cent of the domestic production of electricity, followed by nuclear power plants accounting for 36.4 per cent and conventional thermal energy and renewable energy plants responsible for approximately 5.7 per cent.

Regulation of electricity utilities – power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

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

In the event of objections against the planning permission that cannot be solved by ESTI, or in the event of diverging views among the federal authorities involved, the Federal Office of Energy (SFOE) becomes competent for the approval of the planning permission.

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

In addition, the construction of nuclear power plants requires the prior approval of the Federal Council (government) and of both chambers of the Parliament. Furthermore, the Act on Nuclear Energy stipulates that the grant of a general licence for new nuclear energy installations by the Federal Council and Parliament is subject to an optional referendum. Despite the long-standing strong political opposition against new nuclear power plants, requests for the construction of three new nuclear power plants were filed in 2008. However, in March 2011, after the incident in Fukushima, the process to approve these requests was suspended. In May 2011 the Federal Council decided to phase out nuclear energy and, therefore, not build any new nuclear power facilities. The Federal Council's decision was approved by the two chambers of Parliament in June and September 2011. In April 2012 the Federal Council presented the framework for the 'Energy Strategy 2050', which contains the concrete roadmap to phase out nuclear energy and outlines how Switzerland's high level of energy security should be safeguarded at the same time. Today, the legislative process to transfer the 'Energy Strategy 2050' into applicable law is ongoing (see 'Update and trends').

4 Interconnection policies

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

According to the Electricity Supply Act, grid operators are obliged to allow the interconnection of generation with the transmission and distribution grid. Costs of the interconnection of generation to the transmission grid are to be borne by the generator. Grid operators are, furthermore, obliged to grant third parties (regulated) access to the network without discrimination, but access to the network may be denied in the case that the operation of the network would be endangered or no capacities are available ('legitimate business reasons'). With regard to the allocation of network capacities, generators of electricity from renewable energy sources, especially hydropower, have preferential rights.

5 Alternative energy sources

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

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

The government pursues clearly defined objectives for the saving of energy and to increase the use of renewable energies. The Energy Act stipulates an increased production of electricity from renewable energy sources of at least 5,400GWh by 2030, and contains a package of measures for the promotion of renewable energy and efficient electricity use. The most significant measure concerns a cost-covering feed-in compensation for electricity produced from renewable energy sources. This compensation is detailed in the Energy Ordinance and applies to the following technologies: hydropower (for plants with a performance of not more than 10MW), photovoltaic, wind energy, geothermal energy, biomass and waste material from biomass. The compensation tariffs have been specified on the basis of reference facilities for each technology and output category.

Provided the operation of the facility has started before 31 December 2013, generators of such facilities will be entitled to a cost-covering feed-in compensation for a period of 20 to 25 years depending on the technology. Generators of electricity produced by facilities starting to operate on or after 1 January 2014, in contrast, are only entitled to compensation for a period of 10 to 20 years (again, depending on the technology). Solar plants with a performance below 10kW and an operation start on or after 1 January 2014 do not give rise to a compensation of this type, but rather to a lump sum payment. For solar plants with a performance between 10kW and 30kW the generator may choose between a lump sum and a periodical payment over 20 years. Today, more than 400 million Swiss francs per annum are available to compensate the difference between remuneration and the market price.

6 Climate change

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

The Act on CO_2 Emission Reductions entered into effect on 1 May 2000, forming the central pillar of Swiss climate policy. Its objective was to reduce the emission of climate-relevant carbon dioxide (CO_2) arising from the combustion of fossil fuels by 10 per cent (15 per cent on combustibles and eight per cent on fuel) compared to the level of 1990 until 2010. The targeted reduction of CO_2 emissions had to be achieved primarily through voluntary measures of companies and private individuals. However, in 2008, a regulatory tax on the consumption of on fossil combustibles (except fuels) (CO_2 fee) was introduced in order to meet the declared CO_2 reduction target.

As the Act on CO_2 Emission Reductions regulates measures until 2012 only, it must be revised to cover the period from 2013 onwards. Thus, the Federal Council submitted proposals to Parliament for the amendment of the goals for the reduction of greenhouse gases as from 2013. These goals will enable Switzerland to continue to reduce its output of climate-harming greenhouse gases and thus to fulfil its international obligations such as those of the Kyoto Protocol or of the Durban Conference. The new Act on CO2 Emission Reduction, together with the new Ordinance on CO_2 Emission Reduction, which both entered into force on 1 January 2013, provide for a reduction of greenhouse gas emissions of at least 20 per cent in comparison with emission levels in 1990, by 2020. The measures to achieve this goal include the continuation of a CO_2 fee of 60 Swiss francs (36 Swiss francs until 1 January 2014) per tonne of CO_2 (which may be increased up to 120 Swiss francs per tonne); subsidies to fund CO_2-effective measures in buildings (up to 300 million Swiss francs per year); the possibility of introducing a CO_2 fee on motor fuels; the introduction of a duty for manufacturers and importers of fossil fuel motors to compensate for the emissions caused by these motors; the introduction of CO_2 output limitations for new licensed automobiles; and the continuation and improvement of the existing emissions trading scheme.

7 Government policy

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

Since the incident in Fukushima, the government's policy is to discourage the development of new nuclear power plants. In May 2011 the Federal Council announced the phase-out of nuclear energy that halted on-going plans to build new nuclear production facilities. The Federal Council's announcement was approved by the chambers of parliament in June and September 2011. In April 2012 the Federal Council presented the framework for the Energy Strategy 2050, which outlines the roadmap to phase out nuclear energy and how to safeguard Switzerland's high level of energy security at the same time. Today, the legislative process to transfer the 'Energy Strategy 2050' into applicable law is ongoing.

Regulation of electricity utilities – transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

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

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

9 Eligibility to obtain transmission services

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

The Electricity Supply Act provides for all producers and consumers non-discriminatory regulated third party access, including access to the

transmission grid. However, only a few consumers, such as Swiss Federal Railways or CERN, are directly connected to the transmission grid.

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

10 Government incentives

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

To ensure the security of the electricity supply in the coming decades, the transmission grid must be expanded and upgraded over the next 10 years. Several expansion projects have so far been identified and more will be added. According to the national TSO (Swissgrid), the investment required for upgrading and expanding the transmission grid will amount to around 4–6 billion Swiss francs over the coming two or three decades.

The upgrading and expansion of the transmission grid must be financed by revenues of the application of the regulated grid use tariff. By adjusting this tariff, in particular the Weighted Average Cost of Capital (WACC) (the competence to do so lies with the Federal Department of the Environment, Transport, Energy and Communications (DETEC)), the regulator can provide incentives for Swissgrid either to increase or to decrease its investments in the expansion of the transmission grid. Furthermore, the regulator may oblige Swissgrid to use certain revenues for the expansion of the transmission grid only.

In 2013 a new framework to calculate the WACC was introduced which will be applicable as of 2014 (in 2015, the WACC will remain unchanged). This adjustment of the calculation framework did increase the applicable WACC by approximately one per cent compared with the WACC determined in accordance with the old calculation framework.

11 Rates and terms for transmission services

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

The tariff for the use of the transmission grid is set by Swissgrid and subject to several provisions of the Electricity Supply Act and to the (ex post) review of the Federal Electricity Commission (ElCom) (regulatory authority). The Electricity Supply Act provides that the grid use tariff (for all grids, including those for transmission and distribution of electricity) shall not exceed the recoverable costs, fees and royalties. The recoverable costs consist of operating and capital costs necessary for the secure, productive and efficient operation of the grid and include a reasonable operating profit. ElCom is responsible for the official examination of grid use tariffs and may order reductions or prohibit increases of these tariffs.

The tariffs for the use of the transmission grid are subject to extensive scrutiny by ElCom (and the following judicial authorities) that lowered them in 2009, 2010, 2011 and 2012. In 2013, the Federal Supreme Court and the Federal Administrative Court rendered several decisions declaring the reduction of the transmission grid tariffs ordered by ElCom as being against the law. However, as of today, many of these interventions are still subject to litigation.

12 Entities responsible for assuring reliability

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

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

In order to do so, Swissgrid is entitled and obliged to plan, operate and control the whole (nationwide) transmission network and manage it as one balancing zone, to which belongs the provision of all system services for the transmission grid, including a reserve power supply. In addition, Swissgrid defines the procedures for dealing with shortfalls, cooperates with TSOs from abroad and implements all necessary measures in the event that the stable operation of the network is endangered.

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

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

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

14 Access to the distribution grid

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

The Electricity Supply Act provides for market opening in two stages. In the first five years (2009–2013), end-users with an annual consumption of more than 100MWh are entitled to grid access and can therefore be active on the market. After this period, households and other small-scale consumers will follow, provided that the respective decision is adopted by the parliament (which has not been the case yet) and voters will not reject this step in an optional referendum (which may be requested by 50,000 voters). Due to a combination of jurisprudence, international electricity market price developments, special interest politics and legal provisions to protect end-consumers, only a few eligible end-consumers have entered the market in the past few years. However, since the international electricity market price decreased and the Swiss currency appreciated compared to the euro, it became increasingly more interesting for end-consumers to participate in the market. As of 2014, 27 per cent of the eligible end-consumers became active on the market. The annual consumption of these market participants amounts to approximately 9TWh.

15 Rates and terms for distribution services

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

Network operators are obliged to grant third parties non-discriminatory access to their networks. The tariffs for the use of the distribution grid are set by the network operators and are subject to several provisions of the Electricity Supply Act and the (ex post) review of the regulator. The Electricity Supply Act provides that the grid use tariff shall not exceed the recoverable costs, fees and royalties (see question 11). ElCom (the regulatory authority) is responsible for the official examination of grid use tariffs and may order their reduction or prohibit their increase. In addition, the Electricity Supply Act provides that the grid use tariffs must have a simple structure, reflect the costs incurred by end-users, be independent of the distance between power injection and power consumption and be uniform per voltage level and client group within each network.

Beginning with the tariffs for distribution services in 2009, these tariffs have been extensively scrutinised by ElCom and the following judicial authorities. However, as of today, many of these proceedings are still pending.

Regulation of electricity utilities – sales of power

16 Approval to sell power

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

No particular authorisation is required for the sale of power to customers.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

Non-eligible end-consumers (see question 14) are entitled to receive electricity 'at the necessary quality' and 'at an appropriate price'. The Ordinance on Electricity Supply specifies 'appropriate price' that the tariff for the energy delivery to these consumers must be based on the acquisition

costs for efficient energy generation and on the long-term purchase agreements of the distribution network operator. These costs are subject to an ex post scrutiny by ElCom.

Until 1 March 2013, the Ordinance on Electricity Supply included a provision according to which the tariff shall be based on the market price, if it was lower than the acquisition costs. Thus, end-consumers who did not enter the market in the first stage of the liberalisation could benefit from the lowest possible tariffs without the need for any negotiations, which has deterred them from the participation on the market. Since 1 March 2013 this provision has been revoked. This had a positive effect on the amount of end-consumers who do enter the market (see question 14).

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

18 Rates for wholesale of power

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

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

19 Public service obligations

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

Network operators are obliged to connect all end users and electricity producers within their designated network zone to their grid. Further, the Electricity Supply Act provides an obligation to distribution network operators (who are usually vertically integrated companies also selling electricity) to ensure that all end-consumers who do not participate on the market receive the requested amount of electricity at a reasonable price (see question 17). However, there may be additional public service obligations in cantonal energy laws.

Regulatory authorities

20 Policy setting

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

The federal regulatory authorities ElCom, SFOE, the Swiss Federal Nuclear Safety Inspectorate (ENSI) and ESTI monitor the electricity sector in their designated areas. The general policy is set forth by the Federal Council and must be approved by the parliament in case a federal act is concerned. Cantons may designate authorities to supervise the application of their own regulations (which may exist within the framework of the federal law).

21 Scope of authority

What is the scope of each regulator's authority?

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

SFOE is responsible for the formulation of the energy policy and for all questions relating to energy supply and energy use within the Federal Department of the Environment, Transport, Energy and Communications (DETEC). SFOE is particularly responsible for the preparation of enactments and for their implementation, as well as for authorisation of certain installations.

ENSI is the national regulatory body with responsibility for the nuclear safety and security of Swiss nuclear facilities.

ESTI is the body controlling and approving installations with high tension (greater than 1,000V) and installations with low tension (see question 3).

22 Establishment of regulators

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

ElCom consists of seven independent members appointed by the Federal Council plus an independent secretariat. It is not subject to any directives of the federal council, and acts independently of the federal administration and the regulated business.

SFOE is a part of DETEC. As such, it is independent from the regulated business, but a branch of the federal government.

ENSI is an independent body constituted under public law and supervised by an independent board, which is elected by the Federal Council to which it is directly accountable.

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

23 Challenge and appeal of decisions

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

Decisions of ElCom, SFOE and ESTI can be appealed to the Federal Administrative Tribunal. The Federal Act on Administrative Proceedings and the Federal Law regarding the Administrative Tribunal provide the legal framework for such appeals. Decisions of the Federal Administrative Tribunal may be challenged at the Federal Supreme Court.

Acquisition and merger control – competition

24 Responsible bodies

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

The Federal Competition Commission (ComCo) is in charge of Competition Law merger control. ComCo consists of 12 members who are elected by the Federal Council. The presidency consists of three members. The Federal Act on Cartels demands that the majority of the members of ComCo are independent experts – usually law and economics professors. Deputies of business associations and consumer organisations take the other seats. This composition must ensure objective election criteria as well as sufficient know-how to take objective decisions.

All activities of ComCo are subject to the provisions of the Federal Act on Administrative Procedure as long as the Federal Act on Cartels does not deviate from it. In the case of an unlawful restriction of competition through a concerted practice, an abuse of dominant position or in the case that a planned merger has significant adverse effects on competition, ComCo takes direct action against the initiator. Appeals against decisions may be addressed to the Federal Administrative Tribunal. Appeals against the decisions of the Federal Administrative Tribunal have to be addressed to the Federal Supreme Court.

25 Review of transfers of control

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

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

- the undertakings concerned reported a joint turnover of at least 2 billion Swiss francs or a turnover in Switzerland of at least 500 million Swiss francs; and
- at least two of the undertakings concerned reported individual turnover in Switzerland of at least 100 million Swiss francs.

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

ComCo clears a notified concentration if:

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

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

If ComCo reveals indications that a dominant position is being created or strengthened as a result of the Phase I assessment, an in-depth examination has to be carried out within a period of four months (Phase II). The decision to open Phase II proceedings, as well as the final decision of ComCo (to block or approve a merger) will be published. Further, ComCo publishes the principal terms of the merger and gives third parties the opportunity to state their position with respect to the proposed transaction. Phase II terminates either by approval of the merger in the case that the concentration does not have any significant adverse effect on competition, or by approval of the concentration, subject to remedies or by prohibition of the concentration.

At present, the Federal Act on Cartels including the Competition law merger control is undergoing a revision. The revised Federal Act on Cartels will, inter alia, adopt the duration of Phase I and Phase II proceedings to the respective provisions of the EU Competition Law.

26 Prevention and prosecution of anti-competitive practices

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

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

27 Determination of anti-competitive conduct

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

Similar to EU Competition Law, Swiss Competition Law covers two main anti-competitive types of behaviour.

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

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

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

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

28 Preclusion and remedy of anti-competitive practices

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

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

International

29 Acquisitions by foreign companies

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

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

30 Cross-border electricity supply

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

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

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

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

In addition, the Electricity Supply Act provides for cross-border merchant lines, which can be exempted or partly exempted from third party access and to which the ordinary tariff system is not applicable.

Furthermore, there are continuing negotiations between the European Union and Switzerland regarding an electricity agreement, which will, in the case of a conclusion, most likely result in the adoption of the EU cross-border regime by Switzerland.

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

Update and trends

Market coupling on Swiss borders

In late 2013 the European Power Exchange EPEX SPOT and the Swiss Transmission System Operator Swissgrid AG started a cooperation to be prepared to launch day-ahead market coupling projects in cooperation with other neighbouring Transmission System Operators. The partnership is based upon the Price Coupling of Regions, which was chosen as the market coupling solution for the integration of the European internal electricity market published by the Agency for the Cooperation of Energy Regulators. In November 2013, upon acceptance of the Swiss regulatory authority ElCom, the parties have signed a cooperation agreement defining the scope of the main features of their partnership. EPEX SPOT and Swissgrid will cooperate in day-ahead market coupling projects on Swiss borders. This includes the present activities regarding the Italian Border Market Coupling Initiative as well as future initiatives on the other Swiss borders. As a result, limited cross-border transport capacities will in the future be managed more efficiently and should thus be better used. In order to provide market data to Swiss authorities in compliance with Swiss legislation, EPEX SPOT opened a branch office in Berne on 1 April 2014.

Energy strategy 2050

The Federal Council intends to continue to safeguard Switzerland's high level of energy security in the medium term, although without nuclear energy. This decision was taken by the Federal Council on 25 May 2011 and was approved by the Parliament in June and September 2011. As a consequence, existing nuclear power plants should be decommissioned at the end of their operational lifespan and not be replaced by new nuclear power plants. With a view to the security of supply, the Federal Council communicated in April 2012 some key parameters of its Energy Strategy 2050. Emphasis will be put on increased energy savings (energy efficiency), the expansion of hydropower and new renewable energies, and, if necessary, on fossil fuel-based electricity production (cogeneration facilities, gas-fired combined-cycle power plants) and imports. Furthermore, Switzerland's power grid should be expanded without delay and energy research strengthened. The public consultation on the Energy Strategy 2050 took place from 28 September 2012 to 31 January 2013. The Swiss Federal Office of Energy SFOE evaluated the statements and adjusted the project accordingly. The Federal Council presented its message to the Parliament on 4 September 2013. In January 2014 the Commission for Environment, Regional Planning and Energy of the Parliament started discussions on the implementation of the Swiss Energy Strategy 2050 into the legal framework. At the moment, these discussions are ongoing.

Transactions between affiliates

31 Restrictions

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

There are no specific restrictions on transactions between electricity utilities and their affiliates. However, the parties have to comply with the rules on unbundling. It is therefore required that electricity supply companies secure the independence of their network operations. Cross-subsidisation between network operation and other areas of activity is prohibited. Furthermore, Swissgrid may not transfer the ownership of the transmission network or parts of it to anyone else, including, of course, its shareholding electricity utilities.

32 Enforcement and sanctions

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

Non-compliance with unbundling rules is subject to the jurisdiction of ElCom and fines of up to 100,000 Swiss francs can be levied.

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