

Electricity Regulation

In 27 jurisdictions worldwide

Contributing editors

Earle H O'Donnell and Daniel Hagan



2015

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Electricity Regulation 2015

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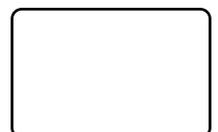


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1 Policy and law

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

Securing energy supply, competitive energy prices and meeting the European Union's common energy and climate goals are core elements of policy in the Finnish electricity sector. Finland's policy in the electricity sector has focused on gradual liberalisation of the market, increasing the efficiency of operations and to integrate Finland's electricity market into the Nordic and wider European markets. Security of supply and competitive electricity prices have traditionally been viewed as important goals. Finland aims to reach self-sufficiency in electricity production in the 2020s, when the new nuclear power plant units under construction are planned to start operating.

Finland's Nordic climate, geographically isolated location, comparatively high consumption of electricity and the goal of promoting renewable energy have all played important roles in the electricity sector.

Legislation relating to the electricity sector is included mainly in the new Electricity Market Act (588/2013, EMA) and the Decrees and Orders in force issued based on it and the previous Act. The EMA, which entered into force on 1 September 2013, repealed the old Electricity Market Act and implemented EU's third Energy Package, most importantly Directive 2009/72/EC concerning common rules for the internal market in electricity. In addition, the new EMA contained numerous national amendments especially relating to distribution network operations.

Other important national statutes in the electricity sector are the Electricity and Natural Gas Market Supervision Act (590/2013), the Act on the Promotion of Electricity from Renewable Sources (1396/2010) and the Competition Act (948/2011), among others.

As Finland is a European Union member state, EU legislation such as REMIT (Regulation on wholesale energy market integrity and transparency, EU Regulation No. 1227/2011) is directly applicable.

2 Organisation of the market

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

The main sources of electricity are nuclear power (amounting to approximately 27 per cent of electricity generated in total in 2013), hydropower (15 per cent) and biofuels (nearly 13 per cent). Electricity is also generated using coal, natural gas, waste fuels, peat and wind power. Over 60 per cent is generated using carbon-free energy sources.

Electricity consumption in 2013 amounted to 83.9TWh, while the total amount of electricity generation was 68.2TWh, meaning that approximately 19 per cent of the electricity consumed was imported. A major part of the wholesale trade in electricity takes place in the Nord Pool Spot power exchange, whose Elspot (day-ahead) and Elbas (intraday) markets set the market price for electricity in the Nordic countries. In addition, electricity is traded on the over-the-counter market and directly between buyers and sellers.

Transmission networks are operated by the national transmission system operator Fingrid Oyj (Fingrid). Since 2011, Finland has held a controlling stake in Fingrid.

There are over 80 distribution system operators in Finland. Distribution networks are owned by regional and local energy companies, public parties, such as municipalities, and to an increasing extent, by private domestic and foreign investors who specialise in infrastructure investments.

The market for sale of electric power has been fully liberalised. All customers, including consumers, have been free to purchase electricity from any provider of their choice since 1998.

Regulation of electricity utilities - power generation

3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

Depending on the type of facility, various notifications as well as environmental and construction permits and authorisations are needed to construct and operate electricity generation facilities. The Energy Authority must be notified of plans to construct and commissioning of all electricity generation facilities exceeding 1MVA.

Legislation regarding the authorisations and permits are included in, among others, the Land Use and Building Act (132/1999), Environmental Protection Act (527/2014), Act on Environmental Impact Assessment Procedure (468/1994) and the Water Act (587/2011).

The most important authorities in environmental and construction permit matters are, depending of the permit in question, the municipal building supervision authorities, regional Centres for Economic Development, Transport and Environment, Regional State Administrative Agencies, the Energy Authority and Ministry of Employment and the Economy.

Setting up joint ventures may be subject to merger control clearance (see question 25).

4 Interconnection policies

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

Interconnection to the transmission grid is based on the principle of open and non-discriminatory network access. Pursuant to section 20 of the EMA, Fingrid is under an obligation to connect all generation facilities to the grid that fulfil the technical requirements and pay the relevant fees. In practice, temporary capacity restraints in a certain area, along with Fingrid's right to determine the appropriate connecting spot, may sometimes cause uncertainties that are best avoided by engaging in discussions with Fingrid as soon as possible during the process.

Interconnection issues are supervised by the Energy Authority, and parties wishing to connect to the transmission grid may ask the Authority to investigate whether the EMA's network access provisions have been complied with. The Energy Authority is obliged to issue decisions on such matters within two months, which may be extended by a maximum of two months upon consent of the party who submitted the request to investigate the matter.

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?

Sustainability and predictability are characteristic of energy policy objectives. In recent decades, Finland has been among the leading industrialised countries to use renewable energy - bioenergy, in particular.

Construction of generation facilities and production of electricity by wind power, forest biomass, wood and landfill gas is promoted by the feed-in-tariff subsidy policy. Certain other renewables, such as solar power, are, however, currently left out of the subsidy system laid out in the Act on the Promotion of Electricity from Renewable Sources. The Energy Authority administers and grants the feed-in-tariffs.

Finnish tax legislation provides possibilities for enterprises using alternative energy sources in the form of, for example, simplified excise taxation (for small-volume producers of biofuel oil) and possibilities to apply for a refund (for energy-intensive enterprises).

Finland has traditionally aimed to produce as much electricity as possible through combined heat and power plants (CHP production). Finland ranks among the top nations internationally in CHP production. The key principle of energy taxation legislation is that the fuels consumed in the production of electricity are exempt from tax and the fuels consumed in the production of heat are subject to tax. According to the Act on Excise Duty on Electricity and Certain Fuels (1260/1996), in cases where light fuel oil, biofuel oil, heavy fuel oil, coal or natural gas is used in a combined production plant of electricity and heat, the amount of carbon dioxide tax will be 50 per cent of the amount prescribed by the tax rate table.

The Finnish parliament passed the disputed Act on Power Plant Tax (1255/2013) in 2013. The tax would target hydro, wind and nuclear power plants built prior to 2004. The country's largest energy company, Fortum Oyj, has submitted a complaint to the European Commission and requested clarification of whether the tax treats companies in a similar situation in an equal manner and whether the tax is prohibited state aid to plants excluded from the tax. According to information available, it is likely that the Act on Power Plant Tax shall not enter into force before the Commission has issued its decision in the matter.

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?

Finland's target of 38 per cent renewable energy for final energy consumption by 2020 has led to it enacting strong support schemes for renewable energy sources, especially wind power. Increasing energy efficiency and a long-term strategy to improve the energy efficiency of buildings are estimated to reduce the total consumption.

Estimates on the impact of climate change on power prices vary significantly. Changes in the availability of Nordic hydroelectric power, emissions trading and changes in the global fuel markets are probably going to have more significance in the short term.

7 Government policy

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

According to Finland's climate and energy strategy, nuclear power is an option, but the initiatives must come from industry. As stipulated in the Nuclear Energy Act, an environmental impact assessment process must be completed before an application for a decision-in-principle can be submitted to the government. Permits to construct new nuclear power plants ultimately require ratification by the Parliament.

Currently more than a quarter of electricity consumed in Finland is produced with nuclear power. Nuclear power is seen as an important means to achieve security of supply and self-sufficiency in electricity production in the future. All nuclear power projects must fulfil the underlying principle of Finnish nuclear power policy and law; in other words, the use of nuclear energy must be in the overall interest of society. Currently, the majority policy does not encourage or discourage the development of new nuclear power plants.

Regulation of electricity utilities – transmission

8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

Transmission network operations require a transmission network licence and certification of independency. The transmission network licence has been granted by the Energy Authority to Fingrid, which is intended to be

the only transmission network operator in the Finnish mainland. Fingrid has been certified by the Energy Authority in accordance with the EMA and applicable EU provisions.

Construction of new high-voltage transmission network lines (110kV and higher) requires permits from the Energy Authority and the environmental authorities.

9 Eligibility to obtain transmission services

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

Access to the network must be granted to all third parties on a non-discriminatory and transparent basis. The transmission system operator and users of the network conclude separate contracts on the connection and use of the network. Parties wishing to connect to the transmission system must fulfil the specified technical requirements set by Fingrid and pay the relevant fees. These requirements have been verified and accepted by the Energy Authority, which makes sure that network access is granted non-discriminatorily and that the connecting fees are reasonable.

10 Government incentives

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

Fingrid operates and develops the transmission grid as part of its duties as a transmission system operator. No direct financial incentives are provided for this purpose. Investments to the transmission system are encouraged financially through the rate of return regulatory model applied by the Energy Authority.

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 Energy Authority supervises that the rates and terms for the transmission services fulfil the requirements of the EMA. The terms must be equitable and non-discriminatory.

The service rates must be reasonable assessed as a whole, which the Energy Authority assesses through a complex rate of return regulation model. The reasonability of pricing is assessed in regulatory periods lasting four years, and the methodology to assess it shall be valid from the beginning of 2016 for two consecutive periods of four years. The transmission system operator has the right to set its own tariffs within these limits.

The Energy Authority's decisions regarding reasonability of pricing may be appealed to the Market Court and ultimately to the Supreme Administrative Court by the transmission system operator.

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 transmission system operator Fingrid is responsible for assuring the reliability, security of supply and efficiency of the transmission grid. Fingrid must publish a 10-year grid development plan every two years. The plan must include an investment plan required to ensure the obligation to develop the system is fulfilled, a plan on investments regarding cross-border connections, as well as other information. The plan is of a non-binding nature and does not constitute any legal effects.

Regulation of electricity utilities – distribution

13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

Distribution network operations require a distribution system licence granted by the Energy Authority. The applicant must fulfil specified technical, financial and organisational requirements.

The distribution system operators have the sole right to construct distribution grid in their operating area. Construction of new high-voltage

transmission network lines (110kV and higher) requires permits from the Energy Authority and the environmental authorities.

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?

Access to the distribution grids must be granted to third parties on a non-discriminatory and transparent basis. Parties wishing to connect to the distribution system must fulfil the specified technical requirements and pay the relevant fees. These requirements have been verified and accepted by the Energy Authority, which supervises network access is granted non-discriminatorily and that the connecting fees are reasonable. Parties suspecting that the distribution operator has not complied with these requirements may ask the Energy Authority to investigate the matter. The Energy Authority issues decisions in connecting disputes based on case-by-case considerations.

The distribution system operator and users of the network usually conclude separate contracts on the connection and use of the network.

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 Energy Authority checks that the rates and terms for the distribution services fulfil the requirements of the EMA. The terms must be equitable and non-discriminatory.

The service rates for distribution services must be reasonable assessed as a whole, which the Energy Authority assesses through a complex rate of return regulation model. The reasonability of pricing is assessed every four years, and the methodology to assess it shall be valid from the beginning of 2016 for two consecutive periods of four years. Each distribution system operator has the right to set its own tariffs within these limits.

The Energy Authority's decisions regarding reasonability of pricing may be appealed to the Market Court and ultimately to the Supreme Administrative Court by the distribution system operator.

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?

Electricity wholesale or retail activities do not currently require any governmental licences. After the upcoming Commission regulation regarding implementation of EU's REMIT Regulation enters into force, parties active in electricity wholesale activities are obliged to register with the Energy Authority and report wholesale transactions as set in the REMIT.

Wholesale activities in the Nord Pool Spot must comply with the rules and regulations of the electricity exchange, which is established and operates pursuant to Norwegian law.

17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

There are no governmental tariffs or similar regulation for power sales in addition to taxation.

18 Rates for wholesale of power

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

There are no governmental rates for wholesale of power. The wholesale prices are determined by supply and demand in the Nord Pool Spot power exchange or agreed bilaterally between the parties.

19 Public service obligations

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

Electricity retailers have an obligation to sell electricity to consumers and certain small users at a reasonable price in the areas where they have significant market power. If no seller is in such a position in a certain area,

the retailer with the highest market share is under this obligation. The seller with this obligation must publish the relevant terms, conditions and prices.

Regulatory authorities

20 Policy setting

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

Regulatory policy and preparing legislation in the electricity sector is in competence of Ministry of Employment and the Economy. The Energy Authority is the main regulatory body of the energy sector. The Finnish Competition and Consumer Authority (FCCA) is the national authority competent in applying EU and Finnish competition and consumer law.

21 Scope of authority

What is the scope of each regulator's authority?

The Energy Authority supervises both electricity markets and networks. The Energy Market Authority has separate units focusing on markets and networks respectively. The markets unit supervises wholesale and retail electricity markets by monitoring compliance with electricity market legislation and promoting competitive electricity markets. The networks unit supervises the reasonableness of network services pricing and compliance with the unbundling requirements. In addition, the Energy Authority and is competent to supervise network connection, network access and access fees issues. Furthermore, the Energy Authority supervises that retail electricity contract terms for consumers are in compliance with the EMA.

The FCCA is competent to apply rules on competition (in particular, articles 101 and 102 of the Treaty on the Functioning of the European Union and their national equivalents). The FCCA has a separate unit focusing on regulated markets and network industries that also handles cases related to energy and electricity markets. The FCCA also reviews mergers in Finland (see question 24).

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?

Both the Energy Authority and the Competition and Consumer Authority are completely independent of the regulated business. Within the agencies, the units maintain a certain degree of autonomy.

Both authorities are established by separate Acts setting their duties and competences in addition to the EMA and the Competition Act (948/2011). The independency of the Energy Authority is also required by the EU Directive 2009/72/EC and the EMA. Both the Energy Authority and the Competition and Consumer Authority belong to the branch of administration of the Ministry of Employment and the Economy, but they are fully independent of the Ministry and of each other. The authorities, however, cooperate in supervising the electricity sector.

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?

Depending on the type of the decision, the decisions of the Energy Authority may be appealed with the Market Court or the regional Administrative Courts as the court of first instance. A further appeal to the Supreme Administrative Court is available.

Acting on a complaint or its own initiative, the Energy Authority may oblige undertakings to comply with the EMA or propose that the Market Court impose fines. If the Energy Authority prepares a proposal to the Market Court to impose fines upon an undertaking, the Market Court's decision may be appealed to the Supreme Administrative Court.

The courts review the legality of the Authority's decision.

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 Finnish Competition and Consumer Authority (FCCA) is competent to review mergers in Finland that exceed the jurisdictional thresholds, unless the transaction falls within the jurisdiction of the European Commission pursuant to EU Merger Regulation 139/2004. The FCCA may approve a concentration with or without remedies.

The Market Court may prohibit a concentration on the proposal of the FCCA or accept the concentration with or without remedies. The Market Court's decisions in merger control matters may be appealed to the Supreme Administrative 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?

A concentration must be notified where the aggregate worldwide turnover of the parties exceeds €350 million and the turnover of each of at least two of the parties accrued from Finland exceeds €20 million for both. The relevant turnovers are based on the last confirmed financial statements.

The notification must be made before the transaction is implemented, and it may be made as soon as the parties can sufficiently demonstrate their intent to close the transaction (ie, by signing a letter of intent or a similar instrument).

The applicable substantial merger control test is whether mergers or acquisitions in the electricity sector significantly impede effective competition in the Finnish markets or a substantial part thereof. When assessing mergers in the electricity sector, it is customary for the FCCA to obtain a statement from the Energy Authority and to consult, if necessary. The Supreme Administrative Court ruled in a significant merger control case in 2010 (*Fortum/E.ON Finland*) that the relevant electricity wholesale markets covered at least Finland and Sweden despite congestion in the cross-border connections and the resulting price variations.

Additionally, in the electricity sector the FCCA may also prohibit or impose conditions on a concentration, as a result of which the combined share of the distribution operations of the parties to the concentration exceed 25 per cent of the amount of electricity transmitted at 400V in the distribution grids at national level.

The review by the FCCA is divided into two phases, the latter of which is initiated only if the FCCA considers it necessary to investigate the concentration further. By law, Phase I investigations last for a maximum of one month from the receipt of the notification. The notification must contain all essential information for the FCCA to assess the concentration otherwise the FCCA is entitled to decide the notification is essentially incomplete. This has also occurred recently (the FCCA's decision of 18 January 2013 in *Elisa Oyj/PPO, Kymen Puhelin* and *Telekarelia*) and means that the procedural timelines begin to run only after all essential information has been provided.

The FCCA aims to clear cases where there are clearly no anti-competitive effects within 10 working days of the notification. However, it is not obliged to do so. If the FCCA decides to open Phase II investigations, it has three more months to investigate the concentration. The FCCA may ask the Market Court to extend the Phase II investigation period by up to two months, which it has done in some complex cases. Usually the FCCA asks consent from the parties in such cases. If the parties have not given their consent, the Market Court should not approve the application unless there are weighty reasons supporting the grant of the extension.

The FCCA has also the power to freeze its own procedural deadlines ('stopping the clock') if the parties fail to provide information required by the FCCA or the information provided is inadequate or erroneous.

By the end of Phase II, the FCCA must either accept the concentration with or without conditions, or submit a proposal to the Market Court that the concentration should be prohibited. If not, the concentration is deemed accepted.

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 FCCA is competent to investigate anti-competitive practices and has the power to apply the national Competition Act and European competition law, namely articles 101 and 102 Treaty on the Functioning of the European Union. According to the Electricity and Natural Gas Market Supervision Act, when the Energy Authority investigates practices that it suspects constitute prohibited competition restrictions, it may transfer the case to the FCCA. The Energy Authority may continue its own investigations in such cases on the basis of the EMA.

The national implementation rules of EU REMIT Regulation entered into force on 1 September 2014, but registration and reporting obligations still await the European Commission's implementation regulation at the time of writing. The Energy Authority is competent to investigate suspected insider trading and market manipulation cases, as well as failures to publish insider information, failures to register with the Authority or failures to notify transactions in electricity wholesale markets as required by the regulation.

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

The FCCA applies both Finnish and EU competition provisions, the substantive content of which is similar and which are interpreted similarly. Since the FCCA is required to prepare a proposal to the Market Court that fines should be imposed and is, in practice, thus required to prove its case before the Court to the requisite standard, the amount and quality of evidence to support that an infringement has occurred play an important role in addition to the FCCA's substantive analysis.

Pursuant to the Administrative Judicial Procedure Act (586/1996), the Market Court is in such cases responsible for clarifying the matter. Where necessary, it shall inform the party, or the FCCA, of any additional evidence to be presented. The Market Court shall, on its own initiative, obtain evidence in so far as the impartiality and fairness of the procedure and the nature of the case require. In its decision the Market Court shall decide whether the competition provisions have been breached and whether fines should be imposed. The Market Court shall review all available evidence and determine on which grounds the resolution can be based.

Interesting practical issues arose as to the standard of proof in the asphalt cartel case (Supreme Administrative Court's decision 2010:86). The Supreme Administrative Court ruled that in hard-core cartel cases where evidence is hard to obtain due to the secret nature of the cartel, the evidence was not subject to the same requirements as in criminal cases and therefore inferences could also be drawn. In drawing inferences nothing prevented the Supreme Administrative Court from taking into account hearsay evidence, alongside other circumstantial evidence. According to the Court, it was essential to take a holistic approach to the evidence presented. One of the cartel participants challenged such standard of proof and assessment of evidence before the European Court of Human Rights (case 5556/10, *SA-Capital Oy v Finland*).

The REMIT's substantial provisions are directly applicable and shall be interpreted similarly. The procedural rules and standards are likely to be similar to competition cases.

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 FCCA has wide investigatory powers, including the power to conduct surprise inspections at business premises, and conditional of the prior approval of the Market Court, in private premises. After its investigations, the FCCA may order infringements to be brought to an end, oblige an undertaking to supply goods or order commitments proposed by the undertaking under investigation to be legally binding. The FCCA may impose minor conditional fines if its decisions have not been complied with.

The FCCA may ultimately submit proposals to the Market Court that fines amounting up to 10 per cent of an undertaking's past year revenue should be imposed.

Update and trends

Electricity markets are currently undergoing major changes with the development of a genuine European internal market in electricity. Examples of current and ongoing developments include the price coupling (calculation of electricity prices in the entire area for each hour of the next day simultaneously, taking into account all purchase and sales offers and transfer capacities) in northwestern Europe launched in February 2014, which extended into Spain and Portugal in May 2014. With these developments, common European rules concerning electricity wholesale market integrity and transparency in the REMIT Regulation will be of significant importance in the near future.

At the same time, regulation of electricity distribution activities has been seen as more important nationally. The increased security of supply obligations and sanctions for non-compliance in the new EMA, as well as the resulting changes in the electricity distribution regulation methodology for the coming years 2016–2023 are the central outcomes of this trend. In practice, the operators are obliged to invest substantially in the grids, especially in sparsely populated areas, to ensure compliance with the new requirements. However, such developments have not

thwarted consortiums formed by foreign private equity investors and Finnish pension insurance companies from acquiring Finland's two largest distribution system operators in 2011 and 2013, which confirms the regulatory environment is still seen as stable and predictable.

Nuclear power policy, security of supply and electricity self-sufficiency will also be hot topics in the immediate near future. The Finnish subsidiary of the Russian Federation's national nuclear corporation Rosatom acquired a 34 per cent share in Fennovoima Oy, which is currently planning to construct its new nuclear power plant to northern Finland pursuant to the decision-in-principle granted by the government in 2010. According to a contract signed simultaneously, Rosatom would be the chosen supplier to construct Fennovoima's new nuclear power plant. After these major changes, Fennovoima has submitted an application to amend the decision-in-principle, which must be approved by the government and ultimately the Parliament. The upcoming decisions are likely to be difficult politically, and current tensions between the West and Russia are likely to play a role.

Market manipulation and insider trading in electricity wholesale markets are sanctioned under the national REMIT enforcement provisions by administrative sanctions only. The Energy Authority has the power to inspect business premises and has power to issue public warnings or impose petty fines. The Market Court would have the power to impose administrative fines in more serious breaches on the proposal of the Energy Authority. The warnings and fines could be imposed on undertakings as well as private persons.

The approach of choosing administrative sanctions only causes problematic relations with the supervision of financial and derivatives markets. During the legislative process, the Economy Committee submitted a statement to the Parliament which requires that the sanctions for breaches of REMIT's substantive rules are aligned with those of market manipulation and insider trading in the financial and derivatives markets in the future. This may involve enacting criminal law sanctioning mechanisms.

International

29 Acquisitions by foreign companies

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

The Act on the Monitoring of Foreign Corporate Acquisitions (172/2012) may limit acquisitions by foreign owners (ie, parties who are not domiciled in any EU or European Free Trade Association (EFTA) member state, or such an organisation or foundation domiciled within the EU or EFTA where a foreigner who is not domiciled in any EU or EFTA member state controls 10 per cent of the aggregate number of votes or otherwise has a corresponding actual influence).

The Act requires that information of a corporate acquisition regarding a monitored entity, defined as an 'organisation and business undertaking considered critical in terms of securing functions fundamental to society on the basis of its field, business or commitments', must be provided to

the Ministry of Employment and the Economy (MEE). Energy production, electricity transmission and distribution are identified as such critical industries. Whether a certain undertaking active in these industries is categorised as a monitored entity will be decided on a case-by-case basis by the MEE and/or the government.

Foreign owners may either notify the MEE in advance, or the MEE may request information regarding a corporate transaction, if a foreign owner acquires 10 per cent of the aggregate number of votes conferred by all shares or corresponding actual authority in a monitored entity which is a limited liability company.

The Ministry must confirm the corporate acquisition unless it potentially conflicts with a key national interest, in which case the Ministry must refer the matter within three months for consideration at a government plenary session. The government may refuse to confirm a corporate acquisition only if this is necessary owing to vital national interest.

30 Cross-border electricity supply

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

Fingrid, as the Electricity System Operator (TSO), is entrusted with the development, construction and operation of regulated interconnectors. Finland is currently connected to Estonian, Swedish, Norwegian and Russian electricity networks. Connecting tariffs, congestion management and information exchanges between TSOs of EU countries must be in compliance with the requirements laid out in the EU Regulation on conditions for access to the network for cross-border exchanges in electricity (Regulation 714/2009).

Fingrid charges separate cross-border transmission tariffs for imports from Russia. Currently electricity may only be imported from Russia, but export possibilities are being investigated.

Under the new EMA, connecting lines and standby supply lines of electricity production plants may also connect facilities located outside



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Finnish borders to the Finnish electricity system. This allows, for example, construction of wind power parks further offshore outside Finnish territorial waters.

Transactions between affiliates

31 Restrictions

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

Transactions between electricity utilities and their affiliates are not restricted directly. Pursuant to EU directives on the internal market in electricity, vertically integrated undertakings active in electricity operations must ensure accounting separation and unbundling of electricity production and sales activities from electricity distribution operations and other business operations. The Energy Authority must be provided with profit and loss statements and balance sheets of unbundled operations annually.

Legal unbundling of electricity distribution operations (ie, establishment of separate entities) is required if certain limits based on amount of annually distributed electricity to consumers are exceeded for three consecutive years. Further, legally unbundled distribution system operators with over 50,000 customers must also fulfil the requirements of functional

unbundling from the electricity production and sales activities by preparing a programme that ensures the operator fulfils its obligations non-discriminatorily. This includes, inter alia, the requirement that the directors of the distribution system operator be independent.

The EMA has adopted the model of ownership unbundling of the transmission system operator Fingrid under article 9 of Directive 2009/72/EC. Thus Fingrid's private owners must manage its shares in a manner that the same persons are not entitled to make decisions both in Fingrid and in the operation of undertakings performing the generation or supply of electricity. In addition, Fingrid board members cannot be legal representatives in an undertaking performing any of the functions of generation or supply of electricity.

32 Enforcement and sanctions

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

The Energy Authority checks that the requirements of unbundling under the EMA are carried out and are being followed in practice. The Energy Authority may oblige undertakings to comply with the EMA, impose petty fines and ultimately submit proposals that the Market Court should impose fines for breaches of the unbundling requirements.

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