

Gas Regulation

Contributing editors

David Tennant, Adam Brown and Liam O'Flynn



2019

GETTING THE
DEAL THROUGH 

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Dentons UKMEA LLP

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Preface

Gas Regulation 2019

Seventeenth edition

Getting the Deal Through is delighted to publish the seventeenth edition of *Gas Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

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

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Angola, India and Austria.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

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

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, David Tennant, Adam Brown and Liam O’Flynn of Dentons UKMEA LLP, for their continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
February 2019

Norway

Yngve Bustnesli

Kvale Advokatfirma DA

Description of domestic sector

1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

The Norwegian gas sector comprises large offshore production facilities producing approximately 120 billion standard cubic metres gas per year (2018). This is the highest amount ever produced and delivered from the Norwegian continental shelf (NCS). Almost all dry gas produced is exported to Europe through a pipeline network consisting of approximately 8,300km of pipelines. Some 19 fields – a record number – are currently under development on the NCS, while 83 fields were in production at year end.

The wholly state-owned company Gassco is the operator for the integrated system for transporting gas from the NCS to other European countries. This role includes the overall responsibility for running the system on behalf of the owners of the transport system. The transport system, Gassled, is owned by various oil and gas companies as well as private investment funds. Equinor (formerly Statoil) is the technical service provider for Gassco with respect to the Kårstø and Kollsnes processing terminals, as well as for most of the gas pipeline and platform infrastructure system. See question 7.

Gas from the NCS covers approximately 25 per cent of the European gas consumption. The largest export quantities go to Belgium, France, Germany and the UK, where Norwegian gas accounts for between 20 and 40 per cent of the total gas consumption. However, the producing companies on the NCS also have gas sales agreements with buyers in other European countries.

In addition, the Snøhvit LNG Export Terminal (located on Melkøya Island in the municipality of Hammerfest) in the Barents Sea delivers LNG to markets in Asia, America and Europe.

An insignificant share of the gas produced on the NCS is used for domestic energy consumption. As a consequence, it has not been necessary to develop an onshore distribution network and separate onshore gas storage facilities to serve domestic end users.

2 What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

Norway is among the world's largest per capita hydropower producers, and a large part of the country's total electricity consumption comes from domestic hydropower. This implies that the domestic need for Norwegian gas is very low, and that the relatively small amount of gas demand is met by domestic production.

Government policy

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

The policy of the domestic natural gas sector is set by the parliament and the government, while the overall responsibility to execute the resource management is vested in the Ministry of Petroleum and Energy (MPE). The Norwegian petroleum industry is based on a principle of sustainable development that strives to facilitate long-term

profitable production benefiting the country as a whole. As part of this principle, the government also focuses on increased recovery from producing fields, and increased exploration in both mature and unexplored areas. A petroleum fund is established to ensure that the revenue from petroleum activities (including the natural gas sector) will be available for future generations. All activities shall comply with comprehensive safety regulations and high environmental standards (zero-pollution policy).

The government has announced its goal to increase the use of natural gas in the domestic market; however, access to cheap energy produced from Norwegian hydropower implies that it will take many years to achieve a substantial increase in the domestic consumption of natural gas. See question 2.

Only conventional natural gas is produced in Norway; therefore, there are no specific regulations relating to unconventional natural gas.

Regulation of natural gas production

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

Pursuant to the Petroleum Act of 29 November 1996 No. 72 (the Petroleum Act), and the analogous Onshore Petroleum Act of 4 May 1973 No. 21, the state has a proprietary right to all petroleum deposits and the exclusive right to resource management. The MPE is, however, empowered to grant licences pertaining to exploration and production of petroleum (see question 5). The granted licences contain criteria the licensees must comply with, and are given for a limited time period within a predefined area. The licensees obtain ownership in the petroleum produced equal to their relative share in the production licence once the petroleum has passed the well head. Petroleum deposits are defined to include all liquid and gaseous hydrocarbons.

The state participates in petroleum activities on the NCS through the state's direct financial interest (SDFI). The participating interest held by the SDFI in production licences, transportation pipelines (see questions 7 and 8) and specific land-based plants are managed by the state-owned limited company, Petoro AS (Petoro). Petoro is a licensee in selected licences, and participates on equal terms and conditions as other licensees. There are no limitations on the maximum participating interest to be reserved to the SDFI, but Petoro's share will normally be less than 50 per cent. Petoro does not hold operatorships.

The government's value from natural gas production is derived through the SDFI's direct ownership in production licences and dividends from the state's 67 per cent ownership in Equinor. Value is also derived through tax, as corporate income tax at a rate of 22 per cent is levied on income from gas extractions, processing and transportation by pipeline. The tax basis is the gross income less the costs incurred in acquiring, securing and maintaining the income, including operation costs, depreciations and financing costs.

In addition to the corporate income tax, income from petroleum activities is also subject to a special tax. The current rate of the special tax is 56 per cent. The basis for the special tax equals the basis for the corporate income tax, after an additional tax depreciation, or uplift, to ensure a regular rate of return on capital investments. The uplift equals 5.2 per cent of the investments each year for four years, which gives a total uplift of 20.8 per cent. In total, investments for special tax

purposes are hence depreciated with 120.8 per cent on the ordinary tax basis.

To ensure income from sales of natural gas is not reduced for tax purposes by different trading activities, companies are under an obligation to report the terms in all sales agreements entered into. For tax purposes, the companies can ask the tax authorities for a preliminary statement regarding the pricing in intra-group sales of gas. A preliminary statement is binding for the company.

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

The main statute providing the legal framework relevant for petroleum activities on the NCS is the Petroleum Act, regulating subsea activities and onshore activities that form an integrated part of the offshore petroleum production. Detailed rules and adaptations are set out in the appurtenant Petroleum Regulations of 27 June 1997 No. 653. Access to third-party infrastructure is also subject to other governmental regulations (see question 10). To date, no onshore exploration and production activities have been conducted in Norway.

Petroleum activities on the NCS are regulated by a licensing system administered by the MPE and the Norwegian Petroleum Directorate, and there are two distinct licences that may be granted by the MPE: exploration licences and production licences. In addition, a specific licence to install and operate pipelines is also granted by the MPE. The exploration licence is not exclusive, and does not give a preferential right if a subsequent production licence is granted. A production licence is, on the other hand, exclusive, meaning licensees are given a sole right to conduct surveys, exploration and production within the geographical area defined by the production licence.

The award of a production licence is, pursuant to the Hydrocarbons Licensing Directive (94/22/EC), made on impartial, objective and non-discriminatory criteria whereby the applicant's technical expertise, financial strength, geological understanding and experience on the NCS, or similar areas, will be weighted.

Exploration and production licences are awarded separately, and an exploration licence will not necessarily be awarded prior to a production licence. Exploration licences are granted for a period of three calendar years, unless otherwise specifically stipulated in the licence. Production licences are granted for an initial period of up to 10 years, and if the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When licensees have fulfilled the mandatory work obligations set out in a production licence, the production licence may be further extended. The possible extension period is, as a general rule, up to 30 years, but may under specific circumstances be up to 50 years.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licensing round termed awards in predefined areas. Areas not regarded as mature, on the other hand, are subject to ordinary licensing rounds, which traditionally have been held every second year. Applicants that are prequalified as upstream petroleum companies can apply individually or as a group. Companies being awarded a production licence are obliged to enter into a joint venture, which is normally established through a decision made by the MPE on the date that the production licence is awarded.

The joint venture is governed by a standard joint operating agreement (JOA) and accounting agreement stipulating detailed rules pertaining to, inter alia, the role of the management committee and the operator, and the licensees' rights and obligations. The award of a production licence is conditional upon the companies' signature to the JOA and the accounting agreement.

If the licensees decide to develop the petroleum deposit, a plan for the development and production (PDO) must be submitted to the MPE for approval, as provided under section 4-2 of the Petroleum Act. The MPE shall also approve the production schedule stipulated by the licensees.

In addition to ordinary awards, licences on the NCS can also be obtained through a transfer of assets. Such transactions require the consent of both the MPE and the Ministry of Finance (MoF) (section 10-12 of the Petroleum Act and section 10 of the Petroleum Taxation Act of 13 June 1975 No. 35).

The MPE, the MoF, the Ministry of Labour and Social Affairs, the Ministry of Climate and Environment and the Ministry of Trade,

Industry and Fisheries, are the main governmental bodies responsible for petroleum activities on the NCS.

The MoF has overall responsibility for ensuring that the state collects taxes and fees (corporate tax, special tax, carbon dioxide tax and nitrogen oxide tax) from the petroleum activities. The Petroleum Taxation Office is part of the Norwegian Tax Administration, and reports to the MoF. Its primary task is to ensure correct levying and payment of taxes and fees adopted by the parliament.

Other important authorities include the Petroleum Safety Authority, which sits under the Ministry of Labour and Social Affairs and has the regulatory responsibility for technical and operational safety, including emergency preparedness and a safe working environment for petroleum activities. The Norwegian Environment Agency is the administrative body responsible for all environmental issues related to petroleum activities, including granting requested permissions to pollute. Finally, the Norwegian Coastal Administration, which sits under the Ministry of Transport and Communications, is responsible for the state's emergency preparedness in the event of pollution (spill of oil).

Decisions of subordinate bodies may be appealed to the relevant ministry in charge. Further, decisions made by the ministries as a first instance may be appealed to the King in Council (ie, the government). Administrative decisions may also, to the extent all administrative rights of appeal have been exhausted, be appealed to ordinary courts. In such case, the court may normally only assess the procedure and application of law, and not the administrative authority's application of discretion.

The regulator has various legal tools to ensure compliance with its decisions, which include the following.

- In the event of non-compliance with regulator decisions, an order may be issued in or pursuant to the Petroleum Act, and the specific regulator that has issued the order may stipulate a current fine for each day that passes after expiry of the time limit set for implementation of the order, until it has been complied with. Notice of a fine shall be given by registered letter or by another equally reliable method. An order to pay a fine is regarded as grounds for enforcement of distraint.
- In the event of serious or repeated violations of the Petroleum Act, regulations issued pursuant hereto, stipulated conditions or orders issued, the government may revoke a licence granted pursuant to the said Act.
- Wilful or negligent violation of provisions or decisions issued in or pursuant to the Petroleum Act shall be punishable by fines or imprisonment for up to three months. In particularly aggravating circumstances, imprisonment for up to two years may be imposed. These provisions shall not apply if the violation is subject to a more severe penalty under any other statutory provision.
- As part of the overall assessments when awarding a production licence, the authorities may take into account whether the applicant has shown any form of inadequate efficiency or inadequate responsibility as a licensee. Although not a sanction, the awareness that a potential non-compliance with the authorities' decisions may be decisive when competing for an award of a production licence is also likely to contribute to the high degree of compliance with the authorities' decisions.

6 Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

The MPE has the authority to request participants to provide security to ensure the fulfilment of all obligations undertaken and liability incurred while conducting petroleum activities. The Petroleum Act does not limit the MPE to request a specific form of security. Traditionally, security has been requested in the form of a parent company guarantee at the time when the company is becoming a new licensee on the NCS. The guarantee is unlimited, and is based on a standard agreement to be entered into by the ultimate parent of all licensees on the NCS forming part of a company group. The MPE is, however, provided with the authority to request adjustments to the security already provided or additional security at any time. This may, for instance, be done prior to upcoming activities increasing the risk of incurring liability, typically in connection with the MPE's approval of a PDO or the decommissioning plan.

If a stand-alone company with limited financial resources is entering into the development, operation or decommissioning phase, it is expected that the MPE will demand other forms of security (bank guarantees, deposits, etc).

Regulation of natural gas pipeline transportation and storage

7 Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

The majority of the transportation system on the NCS (ie, the pipelines and terminals) for Norwegian gas is owned by Gassled, an unincorporated joint venture established on 1 January 2003 consisting of oil and gas companies on the NCS and various investment funds. See question 1. The state is the majority owner, holding a share of 46.70 per cent in Gassled through the wholly state-owned company Petoro, which administers the SDFI (see question 4).

Gassled includes rich and dry gas facilities (including onshore processing facilities and specific storage facilities located abroad) that are either used by both the owners and others, or are planned for such use. Gassled is operated by an independent system operator, Gassco, a limited company wholly owned by the state (established in 2001). Gassco is responsible for running the infrastructure on behalf of the owners. The cost of operating the transport system is met by its users through tariff payments. The capital element in these tariffs also covers investments made by the owners.

Gassco studies and advises the authorities on transport solutions. It contributes to the holistic development of Norwegian gas infrastructure. Its operations are run on a non-profit basis.

Norway does not have any onshore gas storage.

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

If the licensees decide to develop a petroleum deposit, a PDO must be submitted to the MPE for approval (section 4-2 of the Petroleum Act). The MPE's approval of a PDO will normally contain a permission for the construction, placing, operation and use of offshore and onshore pipelines and installations (including LNG facilities governed by the Petroleum Act), but such approval may also be granted following a separate and specific application to install and operate the pipeline pursuant to section 4-3 of the Petroleum Act (licence to install and operate).

When new offshore pipelines are to be constructed for connection to onshore facilities (domestically or abroad), an application for a specific licence to install and operate is normally required. An impact assessment must be completed prior to any such laying of gas pipelines from offshore installations to onshore locations in Norway or abroad.

Gas pipelines and specific processing facilities are operated by Gassco acting as an independent system operator with limited regulatory power. The MPE (in accordance with instructions from the government and policies issued by parliament) determines the regulatory policies related to transmission, distribution and supply of natural gas.

The possibility to challenge or appeal a decision is discussed in question 5.

For an introduction to the legal tools available to the regulator to ensure compliance with its decisions, see question 5.

9 How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

The state has the proprietary right to subsea petroleum deposits and the exclusive right to resource management. The right to build infrastructure in terms of pipelines or structures on the NCS is hence subject to licences and approvals issued by the MPE (see questions 5 and 8). Pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), article 79, all states are entitled to lay submarine cables and pipelines on the continental shelf. Further terms and conditions are set out in bilateral treaties.

Onshore land rights can be obtained through private acquisition or expropriation. These methods are also applicable for obtaining land rights to construct gas distribution infrastructure.

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

Players' access to the gas transportation system on the NCS is governed by section 4-9 of the Petroleum Act and Chapter 9 of the Petroleum Regulations, the latter implementing the regulated access regime in the EC Gas Directive. According to said rules, natural gas undertakings and eligible customers who have a duly substantiated reasonable need for transportation or processing of natural gas shall have access to the upstream pipeline networks subject to certain criteria:

- spare capacity must be available in the transportation system;
- the shipper must demonstrate a duly substantiated reasonable need for transport;
- the shipper's gas must comply with certain technical specifications (quality and pressure); and
- the shipper must demonstrate sufficient finances or provide a guarantee.

The gas transportation system on the NCS is a natural monopoly, with significant infrastructure investments. Tariffs for gas transport are regulated through separate regulations stipulated by the MPE, ensuring profits are extracted in the fields rather than in the transport system (see the Tariff Regulations of 20 December 2002 No. 1724). Available capacity is launched for long-term and medium-term bookings twice a year, while short-term bookings can be made on a daily basis.

The access regime is operated and managed by Gassco, acting as a neutral and non-discriminatory system operator. Gassco shall determine whether the conditions for access are met, reserve booked capacity, and allocate capacity in accordance with the principles and requirements in the Petroleum Act and regulations.

In accordance with the EC Gas Directive, the Norwegian access regime consists of a primary and a secondary market. Agreements in the primary market shall be entered into in accordance with a standard agreement drawn up by the operator and approved by the MPE (standard terms and conditions for transportation of gas in Gassled). The agreement also includes provisions related to different gas qualities, including the consequences of delivering 'off-spec gas' in the system.

An agreement in the primary market includes the right to use spare capacity in upstream pipeline networks entered into by a natural gas undertaking or eligible customer with the owner of the upstream pipeline network acting in his or her capacity as owner, or with the operator acting on behalf of the owner in his or her capacity as owner. An agreement in the secondary market means an agreement for the transfer of rights to use capacity in upstream pipeline networks other than contracts in the primary market.

While the principle for tariffs in the primary market is governed by the Petroleum Act and regulations, the tariff in the secondary market shall be the market clearing price and is not directly controlled by the MPE.

Tariffs in the primary market cover the right the user has to capacity in the upstream pipeline network, irrespective of whether that capacity is actually used. The tariff consists of a capital element and an operating element.

The secondary market is immature, and third-party access requests have, to date, been predominantly related to the primary market. The authorities are also empowered with legal tools to handle inappropriate pricing in the secondary market: the Price Policy Act of 11 June 1993 No. 66 and the Competition Act of 5 March 2004 No. 12 (see question 25).

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

Customers and natural gas suppliers are not empowered with the right to require a pipeline or storage facility owner, or operator, to expand its facilities. They may, however, through a demonstrated need for access to capacity related to new developments, etc, encourage Gassco to propose plans for expanding the capacity in existing facilities. Moreover, Gassco shall at all times consider the necessity of expanding the transport facilities. Before any conclusions are made with respect to expanding the facilities, approval from the MPE must be obtained. The costs related to the expansion shall be carried by the third-party users of the facilities (ie, the shippers) through their payment of tariffs.

In new field developments, the authorities put considerable emphasis on exploring various transport solutions to ensure the best possible resource management. In many instances, it is prudent to construct pipelines that are somewhat larger than is initially necessary, thereby allowing gas from potential new gas fields to be transported in the already existing pipeline system.

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

Facilities used for the processing of natural gas that falls within the scope of the Petroleum Act are governed by the licensing system described in question 5. Third-party access, as described in question 10, also applies to processing facilities.

13 Describe the contractual regime for transportation and storage.

All shippers requesting transportation capacity in the facilities owned by Gassled are obliged to enter into a standard agreement (standard terms and conditions for transportation of gas in Gassled) with Gassco (see question 10). In addition to transportation, Gassled also offers the services of processing of gas, which must be booked and paid for separately by the shippers. Gassco is the operator of the gas processing plants at Kårstø and Kollsnes, located on the west coast of Norway.

Regulation of natural gas distribution

14 Describe in general the ownership of natural gas distribution networks.

The right to own and distribute natural gas will, as a starting point, be subject to a concession granted by the MPE under the Natural Gas Act of 28 June 2002 No. 61 and the Natural Gas Regulations of 14 November 2003 No. 1342 (see question 15). As stated in question 1, only a small amount of gas is consumed nationally. The few gas pipelines located onshore are privately owned and are normally built to provide gas capacity between different facilities. The 65km gas pipeline between the processing facilities at Kollsnes and the refinery at Mongstad may serve as an example.

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

The operation of a distribution network is governed by the Natural Gas Act and the Natural Gas Regulations. The provisions are currently based on the Second EC Gas Directive (ie, Directive 2003/55/EC), while the legislation implementing the provisions from the Third Gas Directive (ie, Directive 2009/73/EC) into Norwegian law is expected to enter into force during 2019 (see question 16). Construction of facilities meant for transmission, LNG facilities and other facilities used for distribution of natural gas are subject to a concession granted by the MPE. Small-scale facilities are, however, exempted.

The concession may be subject to certain criteria as set out in section 2-4 of the Natural Gas Regulations, including the concessionaire's organisation and competence, technical requirements and choice of route of the distribution network. The MPE may also make the concession conditional upon the performance of public services pertaining to security, including security of supply, regularity of service, the quality and price of the transportation services and protection of the environment. In terms of safety issues related to the distribution network, the Directorate for Civil Protection is the responsible authority.

Moreover, the construction and operation of a distribution network is normally subject to an impact assessment pursuant to the Planning and Building Act of 27 June 2008 No. 71 as further detailed in the appurtenant Impact Assessment Regulations of 19 December 2014 No. 1726, with the local municipalities being the responsible authority. The said Act further requires local building permissions for all constructions.

With regard to the possibility to challenge or appeal a decision, see question 5.

For an introduction to the legal tools available to the regulator to ensure compliance with its decisions, see question 5.

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

The Natural Gas Act and regulations provide the framework for obtaining access to the natural gas distribution system. The main principle is that natural gas undertakings and qualified customers shall have access to the system, but no detailed rules have been implemented owing to the reasons outlined below.

With the introduction of the Second Gas Directive (2003/55/EC) in 2005, Norway was granted a temporary derogation from, inter alia, the applicable downstream provisions related to third-party access, designation of distribution system operators of natural gas, and the rules on requirements for business and functional separation of vertically integrated natural gas undertakings.

On 5 May 2017, the European Economic Area (EEA) Joint Committee decided that the Third Gas Directive (2009/73/EC) should be included in the EEA Agreement Annex IV. The Third Gas Directive was formally implemented into Norwegian law through Act No. 22 of 25 May 2018, and the new legislation is expected to enter into force during 2019. The Third Gas Directive repeals and replaces the Second Gas Directive (see question 33). The new Directive includes the same derogation provisions as mentioned above for states qualifying as emergent markets (article 49, second paragraph). According to the Third Gas Directive (article 49, fifth paragraph), the derogation may be granted for a 10-year period for gas infrastructure other than distribution infrastructure. For distribution infrastructure, the derogation may be granted for a period not exceeding 20 years from the date when gas is first supplied through the relevant infrastructure. Norway has still not established a fully functioning downstream market for transportation and distribution of gas to Norwegian customers, and it is therefore expected that Norway will apply for a derogation under article 49.

All rates and terms introduced for distribution services will be governed by the restrictions set out in the Price Policy Act and the Competition Act.

Detailed regulations regarding third-party access to distribution networks and provisions governing rates and terms for distribution services are expected to be implemented as soon as the downstream infrastructure has become more mature.

17 May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

As a starting point, there are no provisions requiring the distributor to expand its system to accommodate new customers or to limit services to existing customers in order to serve new customers. Specific conditions pertaining to, inter alia, expansion of the distribution network may, however, be included in the concession given in accordance with the Natural Gas Act (see question 15).

18 Describe the contractual regime in relation to natural gas distribution.

Norway has not established a fully functioning downstream gas market with an integrated pipeline network. Hence, the immature market for natural gas distribution means that no contractual regime has yet been developed (see also questions 1, 10, 14 and 16).

Regulation of natural gas sales and trading

19 What is the ownership and organisational structure for the supply and trading of natural gas?

As mentioned in question 4, licensees obtain ownership of the produced petroleum equal to their relative share in the production licence. Further, licensees are responsible for marketing and selling their own gas. As regards the state's equity (through the SDFI) in produced gas, this is both marketed and sold by Equinor, together with its own gas.

The transportation network is owned by Gassled (see question 7), and to the extent any third party uses a pipeline or transport-related facility, a predefined tariff is paid. The pipeline infrastructure from the NCS has landing points in the UK and on the Continent. In addition to gas being transported through pipelines, LNG is also transported by

LNG ships from the Snøhvit plant (Melkøya) in the Barents Sea to markets in Asia, America and Europe.

20 To what extent are natural gas supply and trading activities subject to government oversight? What authorisations are required to engage in wholesale trading of gas?

Licensees producing and transporting gas from the NCS are required to report to the MPE on a quarterly basis the volumes sold and the main terms of conditions in their gas sales agreements. The obligation to report includes both internal and external gas sales, and the authorities may request further information as deemed necessary.

An insignificant share of the gas produced on the NCS is used for domestic energy consumption. Therefore, an integrated onshore distribution network to serve domestic end users has not been developed, but the construction and operation of facilities for onshore transportation of natural gas to natural gas undertakings in other regions may only take place after being granted a licence by the MPE. The implementation of the EC Directive 2009/73/EC into Norwegian law implies that potential wholesale trading of gas must, unless a derogation is provided, also be in compliance with the requirements in this Directive. For more details, see question 16.

21 How are physical and financial trades of natural gas typically completed?

Physical trading of natural gas is typically completed bilaterally. The gas producers trade their share of the gas on an individual basis. Historically, all upstream gas sales were completed by entering into long-term contracts with take-or-pay obligations for the buyer. New gas sale contracts entered into with long-term take-or-pay obligations now tend to have a shorter duration. The new contracts also often have a more market-oriented price formula than before (ie, not only oil indexed). Contracts based on spot gas prices are taking an increasing share of the market, and are arguably the most used contract form in new gas sales contracts on the NCS.

Shippers on the gas infrastructure from the NCS to continental Europe must accept the standard terms and conditions issued by Gassco for transportation of gas in Gassled (see question 13).

Norwegian gas sellers frequently use their own terms and conditions when entering into gas sales agreements with continental buyers. Standard short-term contracts include, inter alia, the European Federation of Energy Traders General Agreement Concerning the Delivery And Acceptance of Natural Gas. Standard agreements related to the liquid trading points, such as the National Balancing Point in the UK, the Zeebrugge Hub in Belgium, the Title Transfer Facility in the Netherlands and Gaspool/NCG in Germany, are increasingly relevant to Norwegian gas sellers. The legislation for completing financial trades of natural gas is in place, but the market is still in its start-up phase. One of several standards is the International Swaps and Derivatives Associations Master Agreement.

22 Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Buyers of natural gas from producers are offered a bundled product through the Norwegian transportation system owned by Gassled (see question 7). Norway has still not developed an integrated onshore distribution network, but potential retail buyers may procure gas from various providers.

Regulation of LNG

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

In the upstream sector, only companies being granted a licence under the Petroleum Act will be entitled to own and operate an LNG facility. The ownership is organised as a joint venture, and the various licensees become owners of the LNG. Equinor sells LNG owned by the state (through SDFI) together with its own LNG.

Norway has only a limited number of LNG facilities, and the only full-scale facility with liquefaction, receiving, regasification and export facilities is the Snøhvit facility (Melkøya) located in the Barents Sea.

Tjeldbergodden air gas plant has a smaller fractionation and LNG facility.

24 Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

LNG facilities forming an integrated part of the offshore petroleum production or transportation are subject to the licensing system set out in the Petroleum Act (see question 5). Other LNG facilities are governed by the Natural Gas Act, and hence are subject to the licensing system described in question 15.

Norway has no domestic downstream LNG facilities (see question 23).

For an introduction to the legal tools available to the regulator to ensure compliance with its decisions, see question 5.

25 Describe any regulation of the prices and terms of service in the LNG sector.

Third-party access to LNG facilities falling within the scope of the Petroleum Act is governed by the Regulations relating to the use of facilities by others of 20 December 2005, No. 1625. A party requesting access to an LNG facility owned by another party shall, on objective and non-discriminatory terms and conditions, be entitled to use the facility. Access is obtained through negotiations, and shall be based on the principle that profits from production shall primarily be earned by the producing field and not in the transportation system. If the parties are unable to reach a mutual agreement, the dispute may be brought before the MPE for a decision.

All rates and terms introduced for third-party access to LNG facilities not governed by the Petroleum Act will fall within the scope of the restrictions set out in the Price Policy Act and the Competition Act.

Mergers and competition

26 Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

The Norwegian Competition Authority (NCA) enforces competition law in Norway, including ensuring compliance with the competition rules in markets in the natural gas sector. The Ministry of Trade, Industry and Fisheries provides the framework for the NCA's activities, and shapes the competition policy on a more general level through guidelines and delegated legislation. Decisions by the NCA may be appealed to an autonomous appeal body, and the decisions of the appeal body are in turn subject to judicial review directly before the court of appeal.

Some hard-core infringements of the Competition Act, such as participation in cartels, are criminalised, and Økokrim, the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, may investigate and prosecute individuals for participation in such violations.

27 What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

Undertakings operating in Norway are obliged to comply with two sets of competition legislation: the competition rules in the Competition Act and the competition rules applicable to undertakings under the EEA Agreement. The competition rules in the Norwegian Competition Act are based on the competition rules of the EEA Agreement, which in turn are harmonised with articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

The NCA has powers under sections 10 and 11 of the Competition Act to take action concerning agreements that may restrict competition and the abuse of a dominant position, in either case where there may be an effect on trade in Norway. The NCA will normally apply sections 10 and 11 in a manner consistent with EU law.

Articles 53 and 54 of the EEA Agreement prohibit certain agreements that may restrict competition and abuse of a dominant position respectively. The application of the provisions on competition in the EEA Agreement shall be aligned with the EU courts' interpretation of articles 101 and 102 TFEU. Further, should the European Free Trade Association Surveillance Authority (ESA) or the European Commission (EC) initiate the investigation of an infringement of the competition

Update and trends

New gas pipeline – Polared

The newly constructed Polarled pipeline has a total length of 482 kilometres and ties the Aasta Hansteen field in the Norwegian Sea to the Nyhamna gas processing facility in north western Norway. Polarled is the first offshore pipeline crossing the Arctic Circle and is designed for a transport capacity for of approximately 70 million cubic metres of gas per day. The pipeline expands the existing gas transport network on the NCS and facilitates for phasing in resources available in existing and future Norwegian Sea discoveries. Gassco is the operator of the Polarled pipeline that received its first gas volumes when the Aasta Hansteen field came on stream in December 2018.

Access to third-party infrastructure

Access to third-party infrastructure is governed by two different regulations. Access to the gas transportation network (Gassled) is governed by the Regulations of 20 December 2002 (the Gassled Regulations) relating to the stipulation of tariffs for certain facilities. Third-party access to other offshore infrastructure is governed by Regulations of 20 December 2005 relating to the use of facilities by others (the TPA Regulations). The Gassled Regulations provide rules on regulated access with set tariffs, while access to infrastructure under the TPA Regulations is based on negotiated terms within set criteria. The aim of both Regulations is to ensure efficient use of existing infrastructure on the NCS, and the overriding principle is that only the owner shall be entitled to maximise his or her profit through production and not in the transportation network and other infrastructure.

Gassled owners have lost a major tariff dispute with the Norwegian state through a ruling by the Norwegian Supreme Court

Four of the stakeholders in Norway's gas pipeline network (Gassled) have lost a major case against the Norwegian state through a ruling by the Norwegian Supreme Court on 28 June 2018. The claimants also lost the case in the district court and the Court of Appeal, and this has been one of the most profiled disputes in the Norwegian petroleum sector during the past decades. The companies involved are among the investors that acquired a total 44 per cent stake in Gassled from oil and gas majors back in 2011 and 2012. In 2013 (after the acquisition was completed), the Norwegian government introduced changes in the Tariff Regulations implying a cut in Gassled tariffs by 90 per cent on future gas resources (effective as from 1 October 2016).

Never before have changes to the legal framework with such significant negative economic impact to the owners of oil and gas infrastructure been introduced in Norway, but the alterations must be seen in light of the principle that the owners of the transportation network shall only have a 'reasonable return' on their investment while the main profit shall be allocated to the upstream activities. The new owners held that this reduction was unlawful, and claimed damages amounting to approximately 34 billion Norwegian kroner, which, it was argued, represented the reduced tariff income during the period from 2016 to 2028 (the end of the licence period). The Supreme Court held in its unanimous ruling that there was no legal basis to declare the

reduction of the tariffs through the alterations to the Tariff Regulations invalid, and added that the outcome did not raise any doubts. Since the claimants argued that the tariff reduction was also in breach of the European Convention on Human Rights, Protocol 1, article 1, about the protection of proprietary rights, the case may also be brought before the European Court of Human Rights. It remains to see whether this option is utilised or if the final chapter has already been written by the Norwegian Supreme Court.

Strong focus on Norwegian CCS projects

Both the Intergovernmental Panel on Climate Change and the International Energy Agency point to carbon capture and storage as a necessary measure to reduce global greenhouse gas emissions in line with the climate goals at the lowest possible costs. The Norwegian government has made CCS one of five prioritised areas for national climate action.

The planning of a new full-scale CCS project in Norway is in progress. In 2018, the government decided to fund FEED studies of CO₂ capture at two sites. The companies Equinor, Total and Shell are cooperating on the studies of CO₂ transport and storage, which will be continued as planned into FEED studies in 2019. When FEED studies are completed, external quality assessment of the project will be carried out before the Norwegian government concludes on whether the project should be realised. An investment decision may be taken in 2020/2021. The Norwegian government has an ambition to realise a robust solution for full-scale CCS in Norway provided this will result in international technology development. The CO₂ Technology Centre Mongstad (TCM) is the world's largest facility for testing and improving CO₂ capture technologies and is a vital part of the government's work on CCS.

Digitalisation contributing to increased cost-cutting

After the significant drop in oil prices in 2014, various cost-cutting measures have been implemented to ensure that it is still profitable to conduct petroleum activities on the NCS. The Norwegian oil and gas industry has a good track record in implementing new technology. A recent trend contributing to lower costs is an operator-driven digitalisation initiative with more data sharing, information sharing through digital cloud-based solution replicating real-life scenarios with virtual 3D simulations of operations, data analytics for condition-based maintenance of equipment and artificial intelligence (AI) involving machine learning to better understand and interpret data for more effective decision-making. One of the projects on the NCS benefiting from this digitalisation trend is the major Johan Sverdrup field development. The operator Equinor has developed digital twins of the field's four platforms, providing a unique overview of all parts of the platforms and enabling more realistic surveillance and training, which in turn contribute to more efficient and safe operations.

The Norwegian industry's increased focus on digitalisation in all phases of the petroleum activities is expected to be one of the most important factors contributing to the NCS, strengthening its competitiveness in the years to come.

rules under the EEA Agreement, the NCA is prohibited from making decisions conflicting with those of the ESA or the EC.

28 What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

The NCA has broad powers to investigate an alleged infringement of the Competition Act. The Act prohibits agreements restricting competition and abuse of a dominant position (see question 27). The NCA may impose administrative decisions and fines on undertakings found to have infringed the competition provisions. Individuals breaching the competition provisions may be punished through fines or imprisonment. Individuals may, however, not be punished for infringements of the Competition Act section 11 (abuse of dominance). Abuse of dominance may thus only be sanctioned through fines imposed on undertakings. The NCA has also established a leniency programme, under which full or partial immunity from fines may be granted to undertakings that notify the NCA of the existence of anticompetitive agreements.

The NCA also has the authority to formally end an investigation of a cartel after reaching a settlement with the undertakings under investigation.

The ESA has similar powers to enforce the competition provisions under the EEA Agreement.

29 Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

As briefly described in question 5, all transactions are subject to the consent of both the MPE and the MoF. Transactions include both transfers of licences and the assignment of shares giving decisive control of a company holding a participating interest in one or several licences on the NCS.

Moreover, Chapter 4 of the Norwegian Competition Act establishes a general merger control system also applicable to mergers and acquisitions in the gas sector. The term 'merger', used in this context, includes a broader range of corporate transactions compared with what the term usually refers to.

The merger review system requires the parties to a merger to submit a premerger notification to the NCA if the merger is above the filing thresholds. Mergers are subject to a filing obligation when more than one of the parties have an annual turnover exceeding 100 million Norwegian kroner in Norway and the parties have an aggregate turnover exceeding 1 billion Norwegian kroner in Norway. The NCA must, within fixed time limits, notify the parties and determine whether the notified concentration is likely to significantly impede effective competition, in particular as the result of the creation or strengthening of

a dominant position. The NCA may clear or prohibit the merger, or approve the merger subject to conditions as proposed by the parties.

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

No restrictions apply.

31 Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

Except for common restrictions on the acquisition of shares, there are no particular restrictions on the acquisition of shares in gas utilities.

There are no specific corporate governance regulations or rules regarding the transfer of assets applying to gas utilities. Companies are not obliged to follow the common Norwegian corporate governance regulations. If, however, listed companies derogate from common corporate governance regulations, an explanation needs to be filed.

International

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

There are different requirements depending on whether an exploration or production licence has been granted. The MPE may grant an exploration licence to a body corporate irrespective of whether the company is domiciled or registered, or both, in Norway. Exploration licences may also be granted to physical persons domiciled in a state within the European Economic Area (EEA). Production licences may, on the other hand, and as a starting point, only be granted to a body corporate established in conformity with Norwegian legislation and registered in the Norwegian Register of Business Enterprises. However, pursuant to the EEA Agreement, companies applying for a production licence may also be established in an EEA state. In addition, production licences may be granted to a physical person domiciled in an EEA state.

Moreover, pursuant to the Petroleum Act, a licensee is, as a general rule, obliged to have an organisation based in Norway capable of handling its petroleum activities on the NCS in a prudent manner that safeguards good resource management, health, safety and the environment. To ensure compliance with these requirements, the MPE may, to the extent deemed necessary in relation to the scope of the licensee's activity, set special requirements regarding the licensee's organisation in Norway. The MPE may also, if indicated by the consideration for prudent resource management, or health, safety and the environment, order the licensee to use specific bases. In practice, more or less all companies being awarded a production licence have been domiciled in Norway and registered as a company with limited liability within a reasonable period of time following the award.

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

As a party to the EEA Agreement, Norway is largely affected by legislation enacted by the EU and the EEA. Hence, statutes and regulations on a national level cannot be inconsistent with the rules of, inter alia, non-discrimination and the four freedoms (ie, free movement of goods, capital, services and persons). Two of the most important directives that further elaborate on the basic rules of the EU and the EEA, and which have been implemented by Norway, are Directive 94/22/EC (Hydrocarbons Licensing Directive) and Directive 98/30/EF (Gas Market Directive), the latter being repealed by Directive 2003/55/EC, which, in turn, is repealed by Directive 2009/73/EC. The legislation implementing Directive 2009/73/EC into Norwegian law is expected to enter into force during 2019. See question 16.

An example of an important regulation is Commission Regulation (EU) No. 984/2013, which supplements Regulation (EC) No. 715/2009. Said regulations set out transparent, efficient and non-discriminatory rules for access to gas infrastructure for all network users.

Important international treaties are OSPAR and UNCLOS, which are both applicable under Norwegian law.

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

All cross-border sales must be conducted under a production licence with an approved plan for development and operation, and the MPE must have approved the production profile for the field in question. The activities on the gas receiving terminals located on the territory of foreign states are governed by the Petroleum Act and specific bilateral agreements between Norway and the state where the terminal is located. The gas sales contracts are sent to the MPE for information purposes. See questions 5, 8, 20 and 33.

Transactions between affiliates

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

According to common restrictions set out in both the Public Limited Liability Companies Act and the Limited Liability Companies Act (sections 3-8 and 3-9), the transaction agreement shall be based on commercial terms and shall be in writing (the arm's-length principle). Further, the agreement has to be approved by the general meeting if the amount of the transaction exceeds certain thresholds.

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

The arm's-length principle is enforced by the tax authorities. Non-compliance may lead to surtax or criminal sanctions against the company in question, its officers, or both. In addition, civil claims may be imposed on the board and management of the company.



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