Electricity Regulation 2022

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Getting The Deal Through

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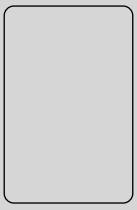

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Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Electricity Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology 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 Lexology 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 a new chapter on Indonesia.

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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.

Lexology 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 editor, John Dewar of Milbank LLP, for his continued assistance with this volume.

LEXOLOGY®
Getting The Deal Through

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Turkey

Değer Boden Akalın and Şekip Bertan Başkaya
Boden Law

LEGAL FRAMEWORK

Policy and law

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

According to the strategic plan of the Ministry of Energy and Natural Resources for the years 2019 to 2023, government policy in the electricity sector is to maintain continuous, high-quality, cost-effective, reliable and environmentally friendly energy supplies and to have a liberal, competitive, transparent, non-discriminatory and stable market. To achieve this market, the most recent government strategy documents and strategy plans include the following goals:

- promoting energy efficiency;
- promoting new technologies, a diversity of resources and the use of domestic and renewable resources in a way to decrease dependency on foreign resources;
- structuring and operating the market in a way that ensures security of supply;
- considering climate change and its environmental effects in energy sector activities; and
- protection of the environment.

Legislative framework

In 2001, the main legislative document that created the current market structure, the Electricity Market Law No. 4628 (Law No. 4628), was issued as part of harmonisation efforts with the European Union and to liberalise the market. Under Law No. 4628, the Energy Market Regulatory Authority (EMRA) was established to regulate and supervise the market as an independent body. Law No. 4628 was amended with Electricity Market Law No. 6446 (EML), which entered into force on 30 March 2013. Law No. 4628 is still in force, but its name has changed to the Law on the Organisation and Duties of the Energy Market Regulatory Authority. Therefore, Law No. 4628 only regulates the duties and rights of the EMRA, while the EML regulates market activities.

The EML and the main secondary legislation, the Electricity Market Licence Regulation of 2 November 2013 (EMLR), regulate the market activities and type of licences. Each market activity, on the other hand, is subject to other secondary legislative documents, which regulate in detail the specific activity. Different generation activities such as renewable energy, nuclear energy and energy efficiency are also subject to their specific laws and implementing regulations.

Organisation of the market

2 What is the organisational structure for the generation, transmission, distribution and sale of power? How is this reflected in the regulatory structure?

Licensing in general

Under the EML, electricity market activities consist of generation, transmission, distribution, supply (retail and wholesale), electricity storage, market operation as well as import and export activities. To carry out any of the market activities, market participants are required to obtain licences from the EMRA. However, certain generation activities listed in article 14 of the Electricity Market Law, such as operating a generation facility based on renewable energy resources (not exceeding the installed capacity determined on the connection agreement) are not subject to licence. Also, electricity storage activity can be conducted with an existing licence, without being subject to a separate licence.

In the past, as a state monopoly, the Turkish Electricity Authority (TEK) was responsible for all generation, transmission and distribution activities. In 1984, following the adoption of Law No. 3096, TEK's monopoly on electricity activities was weakened and private companies were allowed to operate in the market. TEK was first unbundled in 1993 into the two following state-owned enterprises:

- the Turkish Electricity and Transmission Company (TEAS): for generation and transmission; and
- the Turkish Electricity Distribution Company (TEDAS): for distribution.

In 2001, TEAS was unbundled into three state-owned companies:

- the Turkish Electricity Generation Company (EUAS): for generation;
- the Turkish Electricity Transmission Company (TEIAS): for transmission; and
- the Turkish Electricity Wholesale Company (TETAS): for trade.

In 2004, TEDAS was included in the privatisation portfolio as part of a Privatisation High Council Decision. The privatisation process has since been completed. EUAS is also in the process of being privatised. With an amendment made to the EML on 9 July 2018, TETAS was abolished through its merger with EUAS.

Under the EML and EMLR, licences may be granted for a maximum term of 49 years; however, the term for the licences regarding generation, distribution and transmission may not be less than 10 years. The licences may be renewed for a maximum period of 49 years after their expiry. On the other hand, the licence terms for the renewable energy resource areas (RERA), which are special areas designated for generating electricity more efficiently from renewable energy resources in state-owned lands, will be determined in the specifications for each RERA, and the generation licences granted for RERAs cannot be renewed.

Each activity is subject to a separate licence. However, the export activity can be conducted by generation licensees and supply licensees,

while import activity can be conducted by supply licensees. Import and export activities of such legal entities are regulated under their respective supply or generation licences and do not require separate licences. However, as an exception, in order to carry out import or export activities in synchronous non-parallel connections, an authorisation must be obtained from the EMRA and this permission must be incorporated into the licence.

The requirements sought in licence applications are specified in article 20 of the EMLR. A minimum share capital requirement, the amount of which differs depending on the activity, is sought for electricity companies to obtain a licence under the EMLR. A licence fee, which differs depending on the activity, also applies.

A licence cannot be transferred. However, there are certain exceptions for generation licences as explained below.

Generation

Generation licence

In principle, generation activity is subject to a generation licence. In Turkey, generation activity is carried out by state-owned and private generation companies and organised industrial zone legal entities. EUAS, the state-owned generation company, is in the process of being privatised. Generation companies can sell electricity or capacity to persons directly connected through a private direct line, suppliers and eligible consumers. They can also purchase electricity or capacity to fill the gap between their actual production and their supply requirements, and the EMRA will determine the upper limit that they can purchase. The upper limit will be a percentage of the total annual amount of generation stipulated in their generation licence.

The total amount of electricity that a real person or entity can generate through generation companies under its control should not exceed 20 per cent of the electricity amount generated in Turkey in the preceding year.

A licence cannot be transferred. However, a step-in right is provided in the EMLR for banks and financial institutions, which may be exercised only concerning the generation licences. There are other exemptions under the EMLR, set forth for:

- merger and demerger transactions conducted by generation licensees;
- transfer of generation facilities provided that the transfer is conducted through sale, transfer, lease or other similar types of contracts; and
- transfer of the rights and obligations of a generation licensee to another legal entity that has the same partnership structure.

Notwithstanding the foregoing, the EML provides that some activities, such as operating a generation facility based on renewable energy resources with an installed capacity of up to 5 megawatts' self-consumption, may be conducted as being exempt from the licence requirement.

Preliminary licence

To obtain a preliminary licence regarding generation activity, investors are required to apply with certain required documents. In the case of preliminary licence applications for wind and solar power, a contest is held when multiple applicants apply to obtain a preliminary licence for the same region. Upon obtaining the preliminary licence, investors are expected to fulfil certain requirements stated in the preliminary licences such as obtaining the necessary decisions, permits and approvals (eg, environmental impact assessment decisions for most of the application types, technical interaction permit for wind energy applications, approval of zoning plans for preliminary projects) and in some cases completing certain transactions such as property acquisition or usufruct right establishment before applying for a generation licence. Depending on the installed capacity and resource type of the generation facility concerned, preliminary licences can be given for a maximum of 36 months except for the occurrence of force majeure events. This period may be extended by a decision of the EMRA's board within the scope of force majeure provisions. The extension for RERA licences that will result in the pre-licence period exceeding 36 months in total will be subject to the Ministry of Energy and Natural Resources' approval in addition to the EMRA's decision.

Both the EML and the EMLR restrict share transfers and acts and transactions that may result in share transfers and change in the shareholding structure of the preliminary licensee for the duration of the preliminary licence, except in cases of inheritance and bankruptcy. Acting contrary to such restriction may result in the annulment of the preliminary licence. The EMLR excludes certain changes such as changes in the shareholding structures arising from the transfer of publicly owned shares of publicly held companies. The direct and indirect share transfer restriction during the preliminary licence period does not apply to the preliminary licences granted for RERAs as well. This restriction is also not applicable to legal entities granted a preliminary licence for generation facilities anticipated to be established under international agreements.

Transmission

Electricity transmission activities are conducted solely by TEIAS. With the President's Decision published in the Official Gazette dated 3 July 2021, TEIAS was included in the scope of the privatisation process.

Distribution

Turkey's distribution network is divided into 21 distribution regions, 20 of which were owned by TEDAS and one by a private party, namely the Kayseri region. After the inclusion of TEDAS in the privatisation programme, a separate distribution company was established in each of the 20 distribution regions owned by TEDAS.

The privatisation process of all of the distribution companies has been completed. At the time of their privatisations, distribution companies were able to perform retail sales activities. However, distribution companies unbundled their distribution and retail activities into separate legal entities as of 1 January 2013. The retail companies established as a result of such unbundling are defined as 'authorised suppliers'.

The EML provides that a distribution company cannot engage in any activity other than distribution or be a direct shareholder of a legal entity engaged in any other market activity. However, the EMLR allows distribution companies to provide out-of-market activities that the EMRA will consider to be of a nature that will increase efficiency in the electricity distribution activity.

As per the EMLR, distribution companies are obliged to act independently in their businesses and transactions without the interference of any real or legal persons controlling the relevant distribution company. Members of the board of directors and executives at a level of deputy general manager or higher and who hold signatory authority in an electricity distribution company, and those from generation and authorised supply companies under the same control as the electricity distribution company must be different individuals. Such managers cannot hold offices on the board of directors or similar organs of the controlling companies or other companies that are under the control of the controlling companies, formed for the supervision, coordination, management or auditing of the electricity distribution and retail sale or generation activities of such controlling companies.

Organised industrial zones are also entitled to carry out distribution activities within the organised industrial zone limits provided that they obtained an organised industrial zone distribution licence.

Also, distribution companies are entitled to establish and operate electricity storage units.

Market operation

Market operation activity is defined as the operation of organised wholesale power markets and the financial settlements of the transactions made in these markets.

Organised wholesale markets are defined as:

- day-ahead, and intraday markets and futures electricity market where electricity, capacity and retail sale activities are conducted, and that are operated by an intermediary legal entity holding a market operation licence – namely the Energy Markets Operation Company;
- markets where standardised electricity contracts (ie, capital market instruments) and the derivative markets where derivatives based on the electricity or capacity are traded, and that are operated by Exchange Istanbul (Borsa Istanbul); and
- the Organized YEK-G market, the balancing power market and the ancillary services market, which are organised and operated by TEIAS.

The day-ahead market has been in operation since 1 December 2011; the intraday market, on the other hand, started operating on 1 July 2015. The Principles and Procedures regarding the Power Futures Market, which entered into force on 6 May 2021, provides predictability of the future prices in the market and the market was opened for transactions on 1 June 2021. In the Power Futures Market, the market participants have the opportunity to hedge the price risk (hedging) and to be able to foresee price prospects for the future (price discovery).

A regulation outlining the establishment of a market (Organized YEK-G Market) in which the renewable energy certificates (YEK-G certificates), which state that the electricity produced and sold is generated from the renewable energy resources will be traded, was published by the EMRA, and entered into force on 1 January 2021. The Organized YEK-G Market, which was established within this scope, was opened for transactions on 1 June 2021. The Organized YEK-G Market is the market organised and operated by EPIAS where YEK-G certificates are traded among market participants.

Supply

The EML merged the wholesale and retail sale activities into one licence type – the 'supply licence'. According to the EML, supply activities may be conducted by generation companies and public and private sector supply companies.

Retail and distribution activities had previously been provided under one legal entity. Since the separation of the retail side from the distribution arm of distribution companies on 1 January 2013, retail companies have been established. These retail companies are now defined as 'authorised suppliers' under the EML. Authorised suppliers are entitled to sell electricity to eligible customers across Turkey, non-eligible consumers in their region and customers of last resort (ie, the eligible consumers whose power demands cannot be met by other suppliers or who have not selected their suppliers despite being eligible to do so), as a 'last-resort supplier', again in the relevant distribution region. Suppliers that previously held a wholesale licence or obtained supply licence under the EML are entitled to sell electricity to eligible consumers only. The eligible consumer limit has been determined to be 1,200 kilowatt-hours per annum for 2021. Also, supply companies including authorised suppliers may import from and export to countries with which the interconnection condition is satisfied.

The EML obliges the authorised supply companies to supply power to customers of last resort. According to the EML, tariffs of the last-resort suppliers are regulated. The EML further stipulates that some part of the power to be supplied by the last-resort supplier must be provided by EUAS. The percentage that would be provided by EUAS is annually determined by the EMRA.

Import and export

Export activity can be conducted by generation and supply licensees, while import activity can be conducted by supply licensees. Import and export activities of such legal entities are regulated under their respective supply or generation licences and do not require separate licences. Provisions regarding the country, company, amount and period of import or export, if any, are included in the relevant licence.

Additionally, EUAS is entitled to sign electricity sale agreements within the scope of electricity energy exchange, import and export agreements and existing concession and implementation agreements, and conduct import and export activities under such agreements.

REGULATION OF ELECTRICITY UTILITIES – POWER GENERATION

Authorisation to construct and operate generation facilities

3 What authorisations are required to construct and operate generation facilities?

Market participants should obtain a generation licence from the Energy Market Regulatory Authority (EMRA) to construct and operate generation facilities (except for certain generation activities). The Electricity Market Law No. 6446 (EML) introduces a preliminary licence for generation activities. After obtaining the preliminary licence, investors are expected to fulfil certain requirements stated in the preliminary licences such as obtaining the necessary decisions, permits and approvals (eg, environmental impact assessment decisions for most of the application types, technical interaction permits for wind energy applications, approval of zoning plans for preliminary projects) or completing certain transactions such as property acquisition or establishment of usufruct right before applying for a generation licence. A preliminary licence can be given for a maximum period of 36 months.

As per the Electricity Market Licence Regulation of 2 November 2013 (EMLR), in both preliminary licence and licence applications regarding generation activity, applicants have to submit a letter of guarantee to the EMRA for the amount determined based on the resource type by the EMRA for each installed capacity in megawatts. The ceiling for letters of guarantee for preliminary licence applications is determined by the EMRA, provided that it does not exceed 5 per cent of the investment value. The letter of guarantee amounts to be submitted during the licence application will also be determined by the EMRA so as not to exceed 10 per cent of the investment value for generation licence applications.

To obtain a preliminary licence and a generation licence, an applicant must pay licence fees, the amount of which depends on the installed capacity of the generation facility, and must also pay annual licence fees depending on the generated electricity amount after obtaining the licence.

Concerning power plants based on domestic natural resources, the right to use such resources must be obtained. For instance, for hydroelectric power plants, private parties should sign an agreement on the right to use the water with the General Directorate of State Hydraulic Works (SHW) after obtaining the pre-licence from the EMRA. For local mines and geothermal, market participants should sign a resource agreement for the use of the energy resource. Finally, for power plants based on solar and wind power, solar power plant or wind power plant contribution agreements with the Turkish Electricity Transmission Company (TEIAS) should be signed. According to the EML, in licence applications to establish a power plant based on solar or wind power, applicants should submit a measurement of a certain period duly taken within the past eight years in the area where the power plant will be established, and the EMLR regulates the processes and principles for such measurements.

If the landowner where the solar and wind power plant is to be established applies for a licence, no other licence application can be made for the relevant land. If there is more than one licence application for a solar or wind power plant for the same region or the same transformer station or both, the companies wishing to establish a solar or wind power plant must participate in a contest to determine which one of them will connect to the system. The principles and procedures about the contest are regulated with the Regulation on the Contest regarding the Pre-licence Applications for Establishing Power Plants Based on Wind and Solar Power of 13 May 2017 (the Contest Regulation). As per the Contest Regulation, the applicants offer the electricity prices in a way that the highest price to be offered will be the incentivised price determined under the Law on Utilisation of Renewable Energy Resources for the Purpose of Generating Electrical Energy of 18 May 2005 (the Renewable Energy Law) for a period of 10 years. While the Contest Regulation is still in force, as it is structured taking into consideration the application of the incentives, and incentives will no longer be available for new conventional solar and wind pre-licence applications, we understand that the provisions of the Contest Regulation will no longer be applicable, and a new regulation concerning this matter will have to be introduced.

The EML provides that some activities may be conducted as being exempt from the preliminary licence and licence requirements. In line with the EML, the unlicensed generation activity was introduced with the Regulation on the Generation of Unlicensed Electricity in the Electricity Market of 2 October 2013 and the Communiqué on the Generation of Unlicensed Electricity in the Electricity Market of 2 October 2013. The regulation and communiqué were abolished and replaced by a regulation bearing the same name published on 12 May 2019 (the Unlicensed Electricity Regulation). The Unlicensed Electricity Regulation provides licence and company establishment exemptions for the following categories:

- emergency groups and generation facilities that are not connected to transmission or distribution systems;
- generation facilities based on renewable energy sources with a maximum installed capacity of 5 megawatts;
- municipalities' solid waste facilities and generation facilities established for the disposal of mud from treatment plants;
- micro-cogeneration facilities (defined by the EML as cogeneration facilities that have a total installed capacity of 100 kilowatts and less);
- renewable energy generation facilities limited with the contractual capacity stated in their connection agreement;
- cogeneration facilities (defined as the EML as cogeneration facility as facilities that simultaneously generate both heat and electricity) that meet the efficiency figures to be determined by the Ministry;
- renewable generation facilities that consume all the electricity that they generate, without feeding it into the transmission or distribution systems;
- generation facilities owned by legal entities whose majority share capital is directly or indirectly owned by municipalities to be established on the water conveyance pipelines, sewage transport pipelines and the dams that are used for drinking water that are operated by the municipalities; and
- generation facilities based on renewable energy sources established and operated by the SHW to meet the electricity needs of the agricultural irrigation facilities subscribed in the name of the SHW, provided that installed capacity is limited with the agreement power of the agricultural irrigation facility stated in the connection agreement or the sum of the agreement powers of the facilities stated in the connection agreement, if there are multiple agricultural irrigation facilities.

The Unlicensed Electricity Regulation prohibits share transfers in the companies establishing unlicensed generation facilities based on wind or solar energy with a maximum installed capacity of 5 megawatts before the acceptance of these generation facilities except in certain exceptions, such as foreign indirect share transfers or direct or indirect share changes made in a way that does not create a control change in the partnership structure

With the Decision of the Energy Market Regulatory Board dated 16 May 2019 and numbered 8587, the information and documents required for unlicensed electricity generation applications are specified. To construct an unlicensed power plant, one should first apply to the relevant network operator (ie, distribution company authorised in the region where the power plant will be located or TEIAS) with certain documents, such as land usage right documents, an environmental impact assessment document or a single line diagram, depending on the energy resource.

If the relevant network deems the application sufficient, a call letter to invite the applicant to sign the connection agreement is sent. Upon the issuance of this document, the applicants have 90 days to apply for project approval to the institution authorised by the Ministry of Energy and Natural Resources and have 180 days for obtaining the approval. Investors sign a connection agreement with the network operator within 30 days following the fulfilment of all requirements and submission of all the required documents. However, for an unlicensed power plant to become operational, the system usage agreement should also be signed within one month following the start of commercial activity.

Under the Unlicensed Electricity Regulation, the acceptance of facilities must be made:

- within three years for hydroelectric power plants connecting to the system from medium-voltage level;
- within two years for power plants based on sources other than hydroelectric power plants connecting to the system from medium voltage; and
- within one year for facilities connecting to the distribution system from a low-voltage level.

Failure to obtain acceptance within these timescales will result in the termination of the technical interaction permit, connection agreement, allocated capacity, and permits regarding water usage rights, except in cases of force majeure and delays owing to reasons acceptable to the EMRA.

Grid connection policies

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

TEIAS has a legal monopoly regarding transmission activities. No other legal entity is allowed to construct and operate transmission networks. TEIAS must ensure that connection to the transmission system, and the system-use demands of real persons or legal entities, are met in a non-discriminatory manner.

According to the Electricity Market Connection and System Usage Regulation of 28 January 2014 (the Connection and System Usage Regulation), if any new transmission plant or transmission lines to connect such a plant to the system are required for the connection of the generation plants to the system and if TEIAS does not have the necessary financing for such an investment, the investment can be made or financed by the company or companies that request connection to the new plant. The ownership and operation responsibility of the facilities or lines built in this context belong to TEIAS. The investment amount regarding the transmission facility is calculated according to the methodology prepared by TEIAS and approved by the EMRA. The investment amount is fixed in Turkish lira and deemed as the system usage fee

received in advance and it is subject to set-off with the system usage fee. The user does not pay the system usage fee (excluding value added tax) until the investment amount is completed. If the total investment amount set-off is not completed within five years, the remaining amount is paid to the relevant user in a lump sum at the end of the fifth year.

Alternative energy sources

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

The Renewable Energy Law provides a renewable energy support mechanism that covers different incentives and benefits for renewable energy projects including feed-in tariffs.

Feed-in tariffs (fixed minimum electricity sale prices) for the legal entities holding generation licences that started operations in the period between 18 May 2005 and 30 June 2021depending on the type of renewable energy projects are as follows:

- Turkish lira equivalent of US$0.073 per kilowatt-hour for hydroelectric power plants;
- Turkish lira equivalent of US$0.073 per kilowatt-hour for wind power plants;
- Turkish lira equivalent of US$0.105 per kilowatt-hour for geothermal power plants;
- Turkish lira equivalent of US$0.133 per kilowatt-hour for biomass power plants; and
- Turkish lira equivalent of US$0.133 per kilowatt-hour for solar power plants.

The above-mentioned feed-in tariffs are applicable for 10 years from the operation date of the first installed capacity inserted in the generation licence if the whole facility entered into operation, and from the date the facility entered into the renewable energy support mechanism (RES mechanism), if it entered into operation partially (for generation facilities based on biomass obtained by processing waste tires, the period starts from the date the facility enters into the RES mechanism in any case) and in any case until the end of 2030.

According to Presidential Decree No. 3453, feed-in tariffs for the legal entities holding generation licences that start operations between 1 July 2021 and 31 December 2025 depending on the type of renewable energy projects, are as follows:

- 0.40 Turkish lira per kilowatt-hour for hydroelectric power plants;
- 0.32 Turkish lira per kilowatt-hour for wind power plants;
- 0.54 Turkish lira per kilowatt-hour for geothermal power plants;
- 0.32 Turkish lira per kilowatt-hour for biomass plants based on by-products from waste tyre disposal and landfill gas;
- 0.54 Turkish lira per kilowatt-hour for biomass power plants based on bio-methanation;
- 0.50 Turkish lira per kilowatt-hour for biomass power plants based on thermal disposal; and
- 0.32 Turkish lira per kilowatt-hour for solar power plants.

The above-mentioned feed-in tariffs are also applicable for 10 years and will be escalated in January, April, July and October each year according to a formula published in the Presidential Decree subject to certain thresholds.

To benefit from the RES mechanism, legal entities holding renewable energy generation licences and the renewable energy support certificate should apply to the EMRA by the 30th of November of the year before they wish to benefit. YEKDEM is operated by the market operator on a calendar year locked-in basis.

Generators included in the RES mechanism remain in the concerned mechanism for the whole year. After the above-mentioned 10-year period provided to renewable energy generation facilities expires, facilities generating renewable energy will not be able to participate in the RES mechanism and will be only able to sell their electricity in the market at the market price or through bilateral agreements just like the other market participants at negotiated prices without benefiting from the incentives.

The Renewable Energy Law also features further incentives as bonus tariffs for licence holders that use locally produced mechanical or electromechanical equipment or both, or components of this kind in renewable energy facility for a five-year term provided that they commence generation activities between 18 May 2005 and 31 December 2020.

The Renewable Energy Law also authorises the President to determine these bonus tariffs (in terms of tariff amount, terms and the eligible energy sources) that will apply for facilities that commence generation after such date. With the Presidential Decision of 18 September 2020, renewable generation facilities that will start their operations between 1 January 2021 and 30 June 2021 will also be able to benefit from the bonus tariffs provided in the Renewable Energy Law for locally manufactured components used in these generation facilities for five years. Such bonus tariffs differ according to the type of renewable energy and the component manufactured from US$0.004 to US$0.035 per kilowatt-hour. The Regulation on the Support of the Local Components of 28 May 2021 (the Local Manufacture Regulation) stipulates the principles, standards and certification processes regarding locally manufactured mechanical and electromechanical components. The components used in the construction of the power plant and the parts that constitute these components and the percentage of each part in these components are outlined in the Local Manufacture Regulation. The Local Manufacture Regulation provides that the bonus tariffs shall apply in proportion to the percentage of each locally manufactured part in the components, provided that the locally manufactured parts constitute at least 55 per cent of the relevant components. According to Presidential Decree No. 3453, the bonus tariffs for the renewable energy facilities that will start their operations between 1 July 2021 and 31 December 2025 will benefit from a bonus tariff of 0.8 Turkish lira per kilowatt-hour regardless of the type of renewable energy project.

The EML permits capacity increases, modernisation, renewal investments and modifications under certain circumstances. On the other hand, if generation facilities based on renewable sources obtain an approval for a capacity increase from the EMRA after 28 February 2019, the increased capacity will not be able to benefit from the incentives. Accordingly, the formula to calculate the RES Mechanism fee to apply has also been amended to reflect this change (by applying the ratio of the old installed capacity to the new install capacity to the generation amount).

To designate larger-scale special areas called renewable energy resources areas (RERAs), where electricity may be efficiently generated from renewable energy resources in the state-owned lands, and to enable the use of these areas by private parties for electricity generation from renewable resources in the EML under the Regulation on Renewable Energy Resource Areas (the RERA Regulation) of 9 October 2016. Currently, apart from larger scale RERAs, RERA contests for small scale areas are being held as well.

As opposed to the small capacities allocated for each generator in a conventional licence-obtaining process, under the RERA Regulation, high installed capacities can be allocated to one generator by granting a right of usage of the RERA (the RERA Usage Right). While the RERA Regulation sets forth two different methods for the designation of the RERAs, in both methods, the RERA Usage Right is granted through a contest, the procedures of which are regulated in the RERA Regulation. Different from the conventional licence-obtaining process, the RERA Regulation requires the use of locally manufactured components in the

generation facility to be established in the RERA. The applicants of such contests will either be required to manufacture the components themselves in Turkey, in their own factory, or undertake to use components locally manufactured by third parties, or both, depending on the specific requirements outlined in the specifications regarding the relevant RERA Usage Right. In cases where the RERA Usage Right-holder will be required to locally produce the components, it will also be required to perform research and development activities under the requirements to be stipulated under the specifications. As applicable to both methods, as per the RERA Regulation, the highest electricity purchase price that may be offered during the contest will be outlined in the specifications of each contest, taking into consideration the feed-in tariffs set forth for the generators subject to the RES mechanism in the renewable energy legislation. The winner and the purchase price of the electricity will be determined during the contest as the bidder offering the lowest price.

Unlicensed renewable energy generators are also directly subject to the RES mechanism for their electricity exceeding their consumption amount automatically without opting into the RES mechanism. As per the Decree dated 21 June 2018 amended by the Presidential Decree No. 1044 dated 10 May 2019, certain unlicensed generation facilities such as rooftop and façade solar renewable energy based generation facilities up to 10 kilowatts installed capacity established for commercial, industrial, and lighting subscribers at the same measurement point with the consumption facility under the Unlicensed Electricity Regulation are subject to a price guarantee different than the feed-in tariffs, provided that these facilities obtained their right to call letter after entry into force of the relevant Decrees. The surplus electricity will be purchased by the relevant authorised supply companies from the tariffs for 10 years from the start of electricity generation in such facility. However, while the licence holders may continue selling their electricity freely after the expiry of such 10 years, an unlicensed generator will not be able to sell the electricity it generates through the system and only continues to use it for its own consumption. With the Local Manufacture Regulation and the amendment in the Unlicensed Electricity Regulation in line, unlicensed facilities cannot benefit from bonus tariffs applied in the use of locally manufactured components.

Under the regime set forth with the RERA Regulation, on the other hand, the electricity that will be generated by the generation facility will be subject to a purchase guarantee under the RES mechanism at the price stated in the RERA Usage Right agreement (that will be signed by the Ministry and the winner), which is determined as per the contest results. The company obtaining the RERA Usage Right under a contest will not have an option to opt-in or opt-out of the RES mechanism. The purchase period will start from the date of execution of the RERA Usage Right agreement (not from the date of the licence issuance) and after the expiry of this period, the licensee may sell its electricity in the market with its generation licence.

Another incentive granted to renewable energy facilities regarding the use of state properties. If any state property is used for generating electricity from renewable resources or mines and minerals, the Ministry of Environment and Forestry or the Ministry of Finance shall permit the use of such properties concerning the facility and access ways and energy transmission grids up to the connection point of the grid in return for a fee. This permission may be in the form of permits, leases, rights of easement or rights of usage. For facilities that start operating before 31 December 2025, for access ways and energy transmission grids up to the connection point, a discount of 85 per cent shall be applied to the fees for permission, lease, right of easement and right of usage for the first 10 years of their investment and operation periods starting from the permit date.

According to the EMLR, the legal entities applying for a pre-licence and licence for the generation facilities based on domestic natural resources and renewable energy resources shall only pay 10 per cent of the total pre-licensing and licence-obtaining fees. Generation facilities based on renewable and domestic energy resources shall not pay annual licence fees for the first eight years following the first provisional acceptance date of the power plant.

Also, TEIAS and distribution licensees must give priority to the system connection of generation facilities based on domestic natural resources and renewable resources.

Combined electricity generation facility, combined renewable electricity generation facility, supportive sourced electricity generation facility and joint-fired electricity generation facility concepts and related new provisions regulating and permitting the establishment of auxiliary generation units from another source in addition to the main generation power plant were also recently introduced in the Electricity Market Licence Regulation. While a 'combined electricity generation facility' is defined as a single facility established to generate electricity from multiple energy resources connected to the grid from the same connection point, a 'combined renewable electricity generation facility' is defined as a single facility established to generate electricity totally from multiple renewable energy resources connected to the grid from the same connection point. A 'supportive sourced electricity generation facility' is defined as a single electricity generation facility also benefiting from another energy resource in the thermal conversion process. Finally, a 'joint-fired electricity generation facility' is defined as a single electricity generation facility where a renewable auxiliary resource is fired in addition to the main resource, which is not a renewable energy resource. All these facilities are together referred to as 'electricity generation facilities based on multiple resources'. As per the Licence Regulation, the auxiliary resource in the generation power plant cannot be transformed into the main source in the combined renewable electricity generation facility and combined electricity generation facility. The pre-licence application procedures for the auxiliary source in these two facilities are conducted under the same provisions of obtaining a conventional licence, except the contest applied in the pre-licence application. The amount for obtaining a licence and the security amounts to be provided by the applicants of combined generation facilities are calculated by taking into consideration the sum of the installed capacities of the main source and the auxiliary source.

In line with these insertions in the Licence Regulation, certain amendments were also made in the Regulation on the Documentation and Support of the Renewable Energy Resources on the same date. Under this legislation, if generation facilities that are within the scope of the renewable energy support mechanism (RES Mechanism) are transformed into a supportive sourced electricity generation facility or combined renewable electricity generation facility using solely renewable resources, there will be no change in the period that the facility will benefit from the RES Mechanism. If all the resources used in a supportive sourced electricity generation facility are renewable, then this facility will be subject to the feed-in tariff applied to the main resource for the period remaining for the unit subject to the main resource. The same legislation also stipulates that the energy amount that is generated in a combined renewable electricity generation facility will be within the scope of the RES Mechanism at the lowest of the feed-in tariff prices determined for the renewable energy resources used in such a facility for the remaining period that the facility may participate to the RES Mechanism. The Regulation does not provide a new provision setting forth benefits for the RES Mechanism for a combined electricity generation facility where only the supportive resource is renewable.

Climate change

6 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?

Government energy policy promotes renewable energy resources to tackle climate change. The government is also promoting energy efficiency to decrease the amount of power that is consumed. Turkey signed the Kyoto Protocol in February 2009; however, it is not listed in Annex B of the Protocol. Turkey signed the Paris agreement opened to the signature at the United Nations Climate Change Conference (COP 21) on 22 April 2016; however, it has not yet ratified the agreement.

Storage

7 Does the regulatory framework support electricity storage including research and development of storage solutions?

Electricity storage

Recently, electricity storage-related secondary legislation has been entered into force. Electricity storage legislation's scope excludes pumped hydroelectricity power plants and uninterruptible power supplies. The electricity storage facility is defined in the relevant regulation as 'a facility that could store electrical energy and transmit the stored energy to the system'. The relevant regulation differentiates the storage facilities as:

- storage facilities that may be established by grid operators (transmission system operators) and distribution system operators);
- stand-alone storage facilities;
- storage facilities integrated into generation facilities; and
- storage facilities integrated into consumption facilities.

Government policy

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

To promote private sector nuclear energy investments, the Nuclear Energy Law, the first such law in Turkey, was published on 21 November 2007.

The purpose of the law is to stipulate the procedures and principles regarding the commissioning and operation of nuclear power plants for electrical energy production and energy sale under energy planning and policies.

The Turkish Atomic Energy Authority and the EMRA have published the vast majority of legislative documents and criteria regarding nuclear safety, licensing, reactor types, power plant lifetimes, proven technology, fuel technology, localisation, operational records and electrical power. In 2018, a regulatory authority, namely the Nuclear Regulatory Authority (NRA) was established and regulatory authorities of the Turkish Atomic Energy Authority have been transferred to the NRA.

The Turkish government promotes nuclear power plants. Currently, there are three nuclear power projects either in the process of realisation or being considered to be realised. One of those is the Akkuyu Power Plant, which is currently being built by one of the subsidiaries of Rosatom State Atomic Energy Corporation, Akkuyu NPP Joint Stock Company. The installed capacity of the Akkuyu Power Plant is expected to be 4,800 megawatts and the project is expected to be completed by 2023.

An agreement on cooperation concerning the construction and operation of the second nuclear power plant in Sinop was signed on 3 May 2013 between Japan and Turkey. Turkey's second nuclear power plant, which was envisaged to come into operation by 2025 and expected to have an installed capacity of approximately 4,400 megawatts, would be built at Sinop by a Japanese-French consortium; nevertheless, the project is, at the time of writing, at a standstill.

A third nuclear power plant is also expected to be built; however, its location has yet to be determined. In November 2014, an agreement was signed to begin exclusive negotiations to develop and construct a four-unit nuclear power plant between the Turkish Electricity Generation Company, Westinghouse Electric Company and China's State Nuclear Power Technology Corporation; however, at the time of writing, the details of this project remain uncertain.

REGULATION OF ELECTRICITY UTILITIES – TRANSMISSION

Authorisations to construct and operate transmission networks

9 What authorisations are required to construct and operate transmission networks?

The Turkish Electricity Transmission Company (TEIAS) has a legal monopoly on transmission activities. No other legal entity is allowed to construct and operate transmission networks. TEIAS also obtains a transmission licence from the Energy Market Regulatory Authority (EMRA) to conduct transmission activities. The transmission licence can be issued for a maximum of 49 years and a minimum of 10 years at a time.

Eligibility to obtain transmission services

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

Legal entities engaged in generation activities, distribution companies and organised industrial zone distribution licence-holding companies, electricity storage facilities, unlicensed generation facilities and the consumers meeting the certain requirements stipulated in the concerned legislation (such as owning a consumption facility with a capacity of 50 megawatts or more, or, although having a capacity less than 50 megawatts, following the distribution company's admission of its inability to meet the electricity demands of such facility), may request access to the transmission grid.

- connection and system usage requests of real or legal persons to the transmission and distribution system are met by TEIAS and the distribution company without any discrimination between equal parties. No negative opinion can be given about the connection of real or legal persons to the transmission or distribution systems operated by TEIAS or the distribution company, and the use of the system, except for the situations listed below. The technical features of the network at the required connection point are insufficient;
- the standards concerning system connection, the condition of the facility to be connected to the system and the technical standards indicated in the relevant regulations have not been met;
- TEIAS justifies that the intended connection would constitute an obstacle to public service obligations;
- the values, such as the voltage drop, harmonic, electromagnetic interference, or flicker level at the entrance or exit point to the network and at the transmission and distribution stages, do not meet the limits specified in the relevant regulations;
- the facility for which the connection is to be made makes the quality of the electrical energy of the system not within the standards specified in the relevant regulations; or
- a connection point, which is more economical and provides fewer losses in power compared with the connection point applied to, is available in the case of applications for connection of wind or solar power generation facilities.

If TEIAS is of a negative opinion concerning the connection to the system and system use, it should justify such an opinion and such an opinion

should also be approved by the EMRA. If the reasons for such an opinion are not deemed appropriate by the EMRA, TEIAS would be obliged to sign the related connection and system use agreements.

If multiple applicants wish to connect to the transmission system from the same connection point and it is not possible for the transmission system to meet all the applications, the following company types will have priority as set out in the following:

- for consumption facilities:
  - the distribution companies; and
  - organised industrial zone distribution licence-holding companies;
- for generation facilities:
  - companies generating electricity based on domestic coal; and
  - companies generating electricity based on renewable energy.

Transmission system users shall sign connection and use-of-system agreements with TEIAS.

Government transmission policy

11 | Are there any government measures to encourage or otherwise require the expansion of the transmission grid?

With a legal monopoly over the transmission grid, TEIAS is responsible for the grid's expansion. According to the Electricity Grid Regulation of 28 May 2014 (the Grid Regulation), TEIAS prepares the 20-year statement report regarding the transmission system (long-term report).

Such a long-term report includes items such as investment plans regarding the transmission system and potential supply possibilities. In addition to the long-term report, TEIAS is also responsible for preparing and publishing a short-term (ie, one-year term) electricity energy supply and demand projection report for the following year with the participation of all the authorities and institutions and the cooperation of the Ministry of Energy and Natural Resources.

Enabling generation companies to finance and make investments for new transmission lines required for the connection of the generation facilities to the system when TEIAS does not have the necessary financing under the repayment plan regulated in the Electricity Market Connection and System Usage Regulation of 28 January 2014 (Connection and System Use Regulation) may also be interpreted as an encouragement for the expansion and improvement of the transmission grid.

Rates and terms for transmission services

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

The transmission service is subject to regulated tariffs consisting of fees required to be collected for the performance of the transmission system usage activity by TEIAS. The transmission tariff includes the transmission system usage price, transmission system operation price (market operation included) and other fees that may occur under the legislation. Transmission system usage and operation tariffs are prepared and proposed by TEIAS.

TEIAS prepares the transmission tariff proposal and then submits it to the EMRA for approval. The tariff becomes effective for the tariff period once approved by the EMRA. TEIAS is obliged to announce its approved tariffs.

Entities responsible for grid reliability

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

The EMRA is responsible for preparing regulations for connection and reliability of the transmission grid, such as the Grid Regulation and the Electricity Market Connection and System Usage Regulation published in the Official Gazette, dated 28 January 2014, No. 28896. These regulations outline the technical and other standards to be met for the transmission system and also for connection to the transmission network.

According to these regulations, the general responsibility for assuring transmission grid reliability lies with TEIAS. TEIAS is obliged to meet the demands of third parties for connection to the transmission network and system use on a non-discriminatory basis and between equal parties. TEIAS is entitled to take necessary measures and actions in the case of any threat to the reliability and safety of the transmission grid. It is also responsible for the planning and development of the transmission system.

REGULATION OF ELECTRICITY UTILITIES – DISTRIBUTION

Authorisation to construct and operate distribution networks

14 | What authorisations are required to construct and operate distribution networks?

Electricity distribution activities are performed by private distribution companies in the regions indicated in their respective licences. There are 21 regions and all the distribution companies for each region have a monopoly in their region. There is no possibility of obtaining a new distribution licence in Turkey unless a licence regarding a distribution region is cancelled. In the case of cancellation, a privatisation method will apply for granting the relevant concession to operate a distribution licence. It is also possible to acquire shares of a distribution company.

Access to the distribution grid

15 | Who is eligible to obtain access to the distribution network and what requirements must be met to obtain access?

Legal entities engaged in generation activities and eligible and non-eligible consumers can obtain access to the distribution grid. They have to sign connection and use-of-system agreements with distribution companies. If the consumers execute a connection agreement, to connect to the distribution system these consumers have to certify that a retail sale agreement or bilateral agreement has been executed between the consumer and the supply company.

In principle, users are required to apply to the distribution companies in the region where they are located. Applications are evaluated by the distribution company and can only be rejected if:

- the technical features of the network at the required connection point are insufficient;
- the standards concerning system connection, the condition of the facility to be connected to the system and the technical standards indicated in the relevant regulations have not been met;
- the distribution company justifies that the intended connection would constitute an obstacle to public service obligations;
- due to the facility for which the connection is to be made the quality of the electrical energy of the system becomes not compliant with the standards specified in the relevant regulations; or
- a connection point, which is more economical and provides fewer losses in power compared to the connection point applied to, exists, in the case of applications as to the connection of wind power or solar power generation facilities.

A distribution company's rejection is subject to the Energy Market Regulatory Authority's (EMRA) evaluation.

Electricity generation facilities must apply to distribution companies to be granted access to the distribution grids after obtaining a preliminary licence but before applying for a generation licence, upon verification that their connection applications are appropriate.

Similar to investments regarding the transmission system, if a new investment or an expansion investment is necessary for generation and consumption facilities to connect to the distribution system or for meeting the expansion demands of the generation and consumption facilities or such establishment cannot be timely planned, the legal or natural persons requesting this connection may be required to finance or realise the investment themselves on behalf of the distribution company. In these cases, the investment amount is repaid to such legal or natural person at a maximum of 12 monthly equal instalments within the year following the commissioning or after the usage rights of the lands on which the relevant investment passes through has been obtained.

Government distribution network policy

16 | Are there any governmental measures to encourage or otherwise require the expansion of the distribution network?

There are no rate or tax benefits to encourage the expansion of the distribution network. On the other hand, the distribution companies are obliged by law to make the necessary capacity increases, prepare investment plans and submit them to the EMRA for approval, prepare the projects of the distribution facilities included in the investment programme under the approved investment plan and the improvement of these facilities.

Rates and terms for distribution services

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

After revenue requirements and costs for each distribution company are determined, considering elements such as efficiency, the loss or theft ratio, and quality, the EMRA applies a tariff equalisation scheme (national tariff). The national tariff is stipulated to eliminate regional differences in non-eligible consumer tariffs by allowing cross-subsidies from low-loss regions to high-loss regions for the transition period, which was stipulated by Electricity Market Law No. 6446 as the period until 31 December 2020 and has been extended to 31 December 2025 by a decision of the Council of Ministers. The reason for the national tariff system was the high level of theft or loss in certain regions of Turkey.

There are two components of the tariff: retail sales and distribution. The retail sales tariff is subject to a gross profit margin cap and a revenue cap. The distribution tariff, on the other hand, is subject to revenue caps. It also includes loss and theft amounts, distribution, transmission and retail services. Operating expenses and investment requirements related to distribution services, retail services and transmission and other similar costs or expenses are to be reflected in the revenue cap.

REGULATION OF ELECTRICITY UTILITIES – SALES OF POWER

Approval to sell power

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

A supply licence is required for the sale of power to customers. Licences are granted by the Energy Market Regulatory Authority (EMRA) for a maximum term of 49 years. Authorised suppliers are entitled to sell electricity to eligible customers across Turkey, non-eligible consumers and customers of last resort as a last-resort supplier in the relevant distribution region. Suppliers that previously held a wholesale licence and the ones granted supply licences afterwards are entitled to sell electricity to eligible consumers only. As a result, supplier companies and authorised supply companies will not have equal rights unless the eligible consumer limit is decreased to zero kilowatt-hours. Generation companies are also able to sell electricity or capacity to persons directly connected through a private direct line, suppliers and eligible consumers.

Power sales tariffs

19 | Is there any tariff or other regulation regarding power sales?

Retail sales to non-eligible consumers, wholesales of the Turkish Electricity Generation Company (EUAS), last-resort electricity supplies and retail sales of green energy to consumers are regulated and subject to a tariff. Eligible consumers, instead of purchasing electricity at the tariff from the authorised supply companies, can make bilateral electricity purchase agreements with providers of electricity such as electricity generation companies and private wholesale companies (supply companies). At present, the eligible consumer limit is 1,200 kilowatt-hours per annum for 2021.

As per the Communiqué on the Regulation of the Last Resource Supply Tariff (the Communiqué), which entered into force on 20 January 2018, eligible consumers are divided into two groups as eligible consumers with high consumption and eligible consumers with low consumption, and are subjected to different tariffs if they do not make bilateral electricity purchase agreements. According to the Communiqué, while the tariff to be applied for eligible consumers with low consumption will be equal to the retail sales tariff approved for the non-eligible consumers, the eligible consumers with high consumption will be subject to a higher tariff (ie, the last-resort supply tariff will be determined by the EMRA to push those consumers to purchase their electricity via bilateral agreements from supply companies). As per the Communiqué, the threshold of low and high consumption will be determined by the EMRA each year considering social and economic conditions and depending on the development of the market. For 2021, the threshold is determined as 50 million kilowatt-hours per year for residential consumers and 7 million kilowatt-hours per year for other consumers.

Rates for wholesale of power

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

The wholesale tariff of EUAS is prepared and proposed to the EMRA by EUAS and approved by the EMRA; however, this tariff only applies EUAS's supplies to authorised supply companies for their supply to non-eligible customers and customers of last resort, and EUAS has the liberty to negotiate the sale price for its other electricity supply activities (ie, EUAS's supplies to supply companies and eligible consumers) and determine the final sale price with its counterparties. The private wholesale companies (supply companies) may sell power with bilateral agreements to eligible consumers. Also, they may sell power in the day-ahead, intraday markets, Organized YEK-G market, balancing market and Power Futures Market.

Public service obligations

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

The Electricity Market Law No. 6446 obliges the authorised supply companies to supply power, as a last-resort supplier, to the eligible consumers whose power demands cannot be met by other suppliers. Authorised supply companies are also required to meet the energy and capacity demands of non-eligible consumers in their regions.

REGULATORY AUTHORITIES

Policy setting

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

The Energy Market Regulatory Authority (EMRA), which is an independent regulatory authority, determines the regulatory policy concerning the electricity sector. It has been established as an independent regulatory authority to inspect and regulate the electricity market. Similarly, the Nuclear Regulatory Authority (NRA), which is also an independent regulatory authority, determines the regulatory policy concerning nuclear activities and has extensive regulative authorities.

Scope of authority

23 What is the scope of each regulator's authority?

The EMRA has a very broad authority to regulate the market, including:

- establishing a legislative framework to ensure reliable, high-quality, stable and low-cost electricity services;
- granting, amending or cancelling licences;
- approving and amending tariffs;
- establishing and enforcing standards and rules for relations among affiliates to promote competition; and
- imposing administrative fines and sanctions for non-compliance with the applicable legislation and the terms and conditions set out in the licence or the decisions of the EMRA.

The NRA has similar authorities as to nuclear activities, including:

- granting, amending or cancelling licences, permits and authorisations;
- scrutinising nuclear facilities; and
- imposing administrative fines and sanctions for non-compliance with the applicable legislation and conditions set out in the licence or the decisions of the NRA.

Establishment of regulators

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

The President appoints the members and chair of the board of the EMRA. The board consists of seven members, including a chair and a second chair.

The EMRA has financial and administrative autonomy to a certain extent, all financial activities and transactions of the EMRA are subject to audit by the Turkish Court of Accounts.

The NRA has also financial and administrative autonomy to a certain extent. The members and chair of the NRA are to be appointed by the President: the board consists of five members, including a chair and a second chair.

Challenge and appeal of decisions

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

The decisions of the EMRA can be challenged before the Administrative Court of First Instance by the related parties within 60 days of receipt of the EMRA's decision.

The decisions of the NRA imposing punitive fines can be challenged before the Administrative Court of First Instance by the related parties within 30 days of receipt of the relevant decision, and initiating legal action against such decisions does not prevent the decision from being implemented. Although not specifically regulated in the legislation regarding the NRA, other decisions of the NRA can also be challenged before the Administrative Court of First Instance by the related parties within 60 days of receipt of the relevant decision.

ACQUISITION AND MERGER CONTROL – COMPETITION

Responsible bodies

26 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 Competition Authority (TCA), which was established under Law No. 4054 on the Protection of Competition of 13 December 1994 (the Competition Law), has the authority to approve or disapprove mergers or other changes in control over businesses in a sector or acquisitions of utility assets. In addition to the TCA's authority concerning certain mergers, acquisitions or changes in control, the Energy Market Regulatory Authority's (EMRA) approval is required.

Review of transfers of control

27 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?

Under article 7 of the Competition Law, the merger of two or more undertakings as a result of which effective competition is significantly decreased in any market for goods or services within the whole or any part of the state is prohibited. Further, acquisition, except acquisition by way of inheritance, by any undertaking or person of another undertaking, either by acquisition of its assets or all or part of its partnership shares or of other means that confer it with the power to hold a managerial right, is also prohibited.

The TCA declares, via communiqués, the types of mergers and acquisitions that have to be notified to the TCA, and for which an approval must be obtained for them to become legally valid.

According to Communiqué 2010/4 regarding Mergers and Acquisitions Requiring the Approval of the Competition Board of 7 October 2010, certain turnover thresholds are set forth regarding merger and acquisition transactions to determine whether the transaction is subject to the TCA's approval. According to the Communiqué, in the case of a merger or acquisition, the TCA's approval must be obtained if the total domestic turnovers of transaction parties collectively exceed 100 million Turkish lira and the domestic turnovers of at least two transaction parties separately exceed 30 million Turkish lira; or in the case of an acquisition, the value of assets or business subject to the acquisition, or in the case of a merger the local turnover of one of the parties, exceeds 30 million Turkish lira and the worldwide turnover of one other transaction party exceeds 500 million Turkish lira. As per the legislation, while calculating the turnover of a transaction party, the turnover of the

relevant party and the companies and persons holding control of or being controlled by the equity, the management or voting rights of the relevant party is taken into consideration.

In the electricity sector, in addition to the TCA's control, the approval of the EMRA is required in the following cases:

- for the legal entities whose tariffs are subject to regulation: any transaction that will result in ownership changes of 10 per cent or more shares in a closely held company and 5 per cent or more in a publicly traded company or any transaction that would result in a change in control; and
- any transaction resulting in a change of ownership or right to use of the facilities.

How long it takes to obtain the decision is dependent on the TCA's workload and the transactional characteristics.

Prevention and prosecution of anticompetitive practices

28 | Which authorities have the power to prevent or prosecute anticompetitive or manipulative practices in the electricity sector?

The TCA can prevent or prosecute anticompetitive or manipulative practices in all sectors, including the electricity sector. The EMRA also has the authority to approve certain mergers and acquisitions in the energy sector. Additionally, as per the Electricity Market Balancing and Settlement Regulation of 14 April 2009 (BSR), the EMRA, directly or upon the submission of a report by the market operator (ie, the Energy Markets Operation Company) or the system operator (ie, the Turkish Electricity Transmission Company) to the EMRA, is authorised to request the TCA to initiate scrutiny of legal entities that are suspected of any anticompetitive act or transaction concerning their activities regarding organised wholesale electricity markets regulated under the BSR.

Notwithstanding the foregoing, the EMRA may take measures regarding an authorised supplier that has anticompetitive practices. The measures that the EMRA would take for the authorised suppliers may include restructuring their management and restricting the ownership or control relationship with the relevant distribution company.

Determination of anticompetitive conduct

29 | What substantive standards are applied to determine whether conduct is anticompetitive or manipulative?

No specific criteria are provided for the electricity market. Such standards are provided in the Competition Law.

According to article 4 of the Competition Law, agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings that have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited. Examples of such cases are as follows:

- fixing the purchase or sale price of goods or services, elements such as cost and profit that form the price, and any other terms of purchase or sale;
- allocation of markets for goods or services, and sharing or controlling all kinds of market resources or components;
- controlling the amount of supply or demand concerning goods or services, or determining them outside the market;
- impeding or restricting the activities of competitors, excluding undertakings operating in the market by boycotts or other practices, or preventing new entrants to the market;
- apart from exclusive dealing, applying different conditions to persons with equal status for the same rights and obligations; and
- contrary to the nature of the agreement or commercial usages, obliging the purchase of other goods or services together with a good or service, or tying a good or service demanded by purchasers acting as intermediary undertakings to the condition of displaying other goods or services by the purchaser, or imposing terms as to the resupply of a good or service supplied.

According to article 5 of the Competition Law, agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings, which satisfy whole conditions listed therein, are exempted from the provisions of article 4. The relevant conditions listed in article 5 are as below:

- the relevant party should provide new improvements and growth for the production or distribution of goods, or should provide economic or technological improvements;
- consumers should be benefitting from those improvements and growth;
- the competition in the relevant sector should not be eliminated significantly; and
- the competition should not be restricted more than enough to maintain the benefits mentioned earlier.

Also, the abuse of a dominant position in the market is prohibited by the Competition Law. According to article 6, the abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the state on their own or through agreements with others or concerted practices, is prohibited.

Preclusion and remedy of anticompetitive practices

30 | What authority does the regulator (or regulators) have to preclude or remedy anticompetitive or manipulative practices?

The TCA may impose administrative monetary fines of up to 10 per cent of annual gross revenues of the undertakings generated by the end of the financial year preceding the TCA's infringement decision, or if it is not possible to calculate it, by the end of the financial year closest to the date of such a decision, and such annual gross revenues are determined by the TCA. The TCA may also order the exercise of certain actions or oblige the infringing persons to refrain from certain actions for the re-establishment of competition and reversion to the situation before the infringement.

The TCA may also impose monetary fines on real persons employed in the managerial bodies or other employees of the undertakings of up to 5 per cent of the fine imposed on the undertaking.

The TCA is also entitled to impose a punitive fine, amounting up to a thousandth of annual gross revenues of the undertakings generated by the end of the financial year preceding the TCA's decision, in the case of realisation of a merger or acquisition subject to TCA's approval without such an approval or submission of wrongful or misleading information in the application to obtain the TCA's approval for a merger or acquisition. As of 2021, such a punitive fine cannot be less than 34,809 Turkish lira.

After investigation starts, the TCA, ex officio or at the request of the parties, may decide to initiate a conciliation procedure. In such a case, there may be a reduction in administrative monetary fines up to 25 per cent.

In the case of a breach, the TCA may also implement structural remedies, so that discussion may decide on actions that are required to be taken for the restoration of competition, such as the obligation to transfer an enterprise's shares or assets.

Another sanction mechanism is established for competition breaches in the organised wholesale electricity market with the BSR.

If the TCA detects a competition breach by a market participant or balancing unit, or both, the EMRA may impose maximum price limits to the breaching market participant or balancing unit, or both, in the day-ahead and balancing markets up to a year.

INTERNATIONAL

Acquisitions by foreign companies

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

There are no specific requirements or limitations on acquisitions of interests in the electricity sector by foreign companies.

Authorisation to construct and operate interconnectors

32 What authorisations are required to construct and operate interconnectors?

As the Turkish Electricity Transmission Company (TEIAS) has a monopoly over the transmission system, it is also the only authority entitled to construct and operate interconnections. The articles of association of TEIAS set forth that TEIAS is responsible for the preparation of the Electricity Grid Regulation published in the Official Gazette, dated 28 May 2014, No. 29013, which determines the technical and operational standards for the interconnected system and the Electricity Market Balancing and Settlement Regulation of 14 April 2009, and establishing the required infrastructure and organisation for the implementation thereof, and carrying out the relevant international interconnection works under the Ministry of Energy and Natural Resources' (the Ministry) international interconnection policies. As per article 8 of the Electricity Market Law No. 6446 (EML), TEIAS may construct or operate the parts of the international interconnection lines located outside the national borders and establish an international company to that end, or become a partner to an existing international company and participate in organisations regarding the operations of regional markets with the approval of the Ministry. In line with the EML, the Import and Export Regulation of 17 May 2014 (the Import and Export Regulation) states that interconnection line capacity allocations, tracking of the use of interconnection lines, and the congestion management is conducted by TEIAS, but TEIAS is allowed to transfer these rights and obligations to international institutions totally or partially under the international agreements, provided that the approval of the Ministry is obtained.

Interconnector access and cross-border electricity supply

33 What rules apply to access to interconnectors and to cross-border electricity supply, especially interconnection issues?

Synchronous parallel interconnections

Pursuant to article 24, paragraph 8 of the EMLR, a licence amendment is required in order to carry out import and export activities. Companies (ie, generation companies by not exceeding the total installed capacity of their facility and supply companies for export and supply companies for import) will not need to obtain special permission of the EMRA to perform import and export activities using synchronous parallel interconnections. Currently, the synchronous parallel interconnection lines in Turkey are the interconnection lines established with the European Network of Transmission System Operators for Electricity's (ENTSO-E) Continental Europe Synchronous Area (ie, Bulgaria and Greece) under the integration of Turkey to the ENTSO-E system. After a long trial period, the ENTSO-E Regional Group Continental Europe's decision on permanent connection to continental Europe was publicly announced in May 2014. In line with this decision and the agreement reached in meetings in April 2014 on the commencement of permanent synchronous operation of the Turkish electricity system with the continental European system, on 15 April 2015, a long-term agreement was signed between TEIAS and ENSTO-E. By the execution of this agreement, Turkey has committed to promoting the harmonisation of its electricity regulation with the European Union's third electricity package and to complying with the technical standards of ENTSO-E. The Observer State Agreement having been executed between Turkey and ENTSO-E on 14 January 2016, Turkey has become the first observer member of ENTSO-E. The commercial electricity exchange between Turkey and ENTSO-E's Continental Europe Synchronous Area is currently carried out through three connection lines, two of which connect the Turkish system to the Bulgarian system, while the other connects the Turkish system to the Greek system. To perform electricity export or import activities through synchronous parallel interconnection lines, the companies may either participate in the tenders regarding capacity allocations announced by TEIAS or international institutions to which TEIAS is a party. A generation company cannot obtain capacity allocation for electricity export more than its total installed power that is in operation.

Currently, to perform electricity export and import activities with Bulgaria or Greece, companies are required to have allocated capacities regarding the electricity amount that they will import or export. The capacities may be obtained either in Greece or Bulgaria from the Greek or Bulgarian transmission system operator by the company that the electricity will be imported from or exported to; or in Turkey from TEIAS by the Turkish company that will import or export electricity. The capacity allocations in Turkey for cross-border trade between Turkey and Bulgaria or Greece are made by TEIAS via an auction process. Accordingly, the auctions for the allocation of the capacity by TEIAS are realised on the T-CAT Platform where bids are set and the annual auction rules for commercial exchanges are also published by TEIAS. Companies wishing to participate in these auctions and those wishing to trade in energy with Greek or Bulgarian companies awarded capacity allocation in Greece or Bulgaria must be registered on the T-CAT Platform and have to adhere to the auction rules.

Non-synchronous interconnections

If a cross-border trade is planned to be conducted through non-synchronous parallel interconnection lines, then the approval of the Energy Market Regulatory Authority (EMRA) shall be obtained after submitting the documents and information required for the amendment of the licence in the Import and Export Regulation. For the EMRA to grant such an approval, the positive opinion of the Ministry must be obtained by the EMRA. Before granting such an approval, the EMRA also obtains opinions from TEIAS or distribution licensees on technical matters.

TRANSACTIONS BETWEEN AFFILIATES

Restrictions

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

A distribution company cannot engage in any activity other than distribution or be a direct shareholder of a legal entity engaged in any other market activity. Also, the direct and indirect shareholders of distribution companies, the entities under the control of distribution companies, and persons employed by the direct or indirect shareholders of these persons and entities controlled by these persons cannot engage in any unlicensed generation activity based on solar or wind power within their own distribution region.

The Electricity Market Law No. 6446 (EML) provides that the total amount of electricity that an entity can generate through generation

companies under its control cannot exceed 20 per cent of the electricity generated in Turkey in the preceding year.

The EML further provides that the total amount of electricity to be sold by supply companies to end customers cannot exceed 20 per cent of the total electricity consumed in the market during the preceding year. Also, the EML provides that the total electricity amount that supply companies can purchase from generation companies and importer companies (ie, supply companies with an importation authorisation) or import cannot exceed 20 per cent of the total electricity consumed in the market during the preceding year.

Enforcement and sanctions

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

As the regulatory authority of the market, the Energy Market Regulatory Authority may enforce restrictions on utilities dealing with affiliates.

In the case of non-compliance, the licensee is given a notice period of 30 days to remedy the non-compliance. If the non-compliance continues following the notice period, a fine between 1,188,204 Turkish lira and 2,376.415 Turkish lira (for 2021) will be imposed. Where the licensee repeats the non-compliance, the fines imposed each time are doubled. It may also result in revocation of its licence.

In other cases, such as providing false or deceptive information while making a licence application, having activities falling out of the scope of the licence, acting against the shareholding participation restrictions and so forth, certain other fines range from 1,1 million to 2,3 million Turkish lira and licence revocation sanctions are regulated under the EML.

As for the nuclear activities, the Nuclear Regulatory Authority (NRA) has the authority to impose punitive fines for non-compliance, such as conducting the activities subject to the NRA's permission without such permission, acting against the NRA's decisions and instructions and operating a nuclear facility without having a licence, ranging from 2,006.205 Turkish lira to 100,310.278 million Turkish lira.

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in electricity regulation in your jurisdiction?

Power Futures Market

The Power Futures Market was opened to transactions on 1 June 2021. It comes into effect as an organised market where traders can trade with physical delivery. It offers users the opportunity to fix prices against changes in future prices. The market will provide central counterparty service by guarantee payments.

To join the Power Futures Market, market participants should:

- obtain an electricity generation or supply licence;
- execute a market participation agreement;
- execute a day-ahead and intra-day market participation agreement;
- execute a Power Futures Market participation agreement;
- register with Takasbank (Clearing Bank) and open an account;
- pay the market entry guarantee; and
- deposit the default guarantee account contribution.

Introduction of the green energy tariff, the YEK-G Certificate and the Organized YEK-G Market

The Energy Market Regulatory Authority (EMRA) introduced a green energy tariff on 24 July 2020, which is applicable from 1 August 2020. Under the EMRA's relevant decision, the customers who wish to consume solely the electricity generated from renewable energy resources can apply to the authorised supply companies, and authorised supply companies will from then on apply the green energy tariff for that consumer. The concerned tariff will be regulated by the EMRA.

A mechanism for guaranteeing that the consumer benefiting from the green energy tariff solely consumes energy generated from the renewable energy resources is also to be put in place.

As per the YEK-G Regulation, the YEK-G Certificate must certify that the electricity supplied to the consumer is generated from the renewable energy resources, and a certificate verifying this will be issued by the market operator (ie, the Energy Markets Operation Company (EPIAS)). Organized YEK-G market was opened in this respect to transactions on 1 June 2021.

Electricity generators, which generate electricity from the renewable energy resources can apply to EPIAS to participate in the system. Electricity generators participating in the system can apply to EPIAS for the issuance of YEK-G Certificates. For each megawatt-hour generated, a separate YEK-G Certificate will be issued, and each certificate will be valid for 12 months. Unlicensed facility owners will not be eligible to obtain YEK-G Certificates. A market operation fee will not be charged in 2021.

Trading YEK-G Certificates through bilateral agreements is possible too; however, trader companies will be obliged to report these bilateral agreements to EPIAS so that the repeated certification may be prevented.

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