

# Czech Republic

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## 1 Policy and law

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

The goals of the Czech Republic in the energy sector, including the preferred fuel mix, are outlined in the State Energy Policy (SEP) which provides both a long-term and short-term outlook on energy. The government may update the SEP from time to time.

In 2015, the Czech government approved a long-awaited update of the SEP. The SEP introduces a strategy for the development of the energy sector in the Czech Republic over the next 25 years. The SEP, as amended, identifies the mechanisms that ensure the national security of energy supply, and proposes a wide diversification of resources while maintaining the existing full independence of heat and electricity supply and exports of energy produced.

The primary legislative source is Act No. 458/2000 Coll. (the Energy Act), which sets forth the rights and obligations of the entities active in the energy sector, including electricity, gas and heating businesses.

Apart from the Energy Act, renewable sources of energy and subsidy programmes are regulated in Act No. 165/2012 Coll., the Supported Renewable Sources Act. Further, numerous other Acts regulate particular issues, including implementing EU legislation (such as energy efficiency requirements), or implementing regulations issued by the Energy Regulatory Office (ERO) (such as pricing decisions, implementing and licensing ordinances), or the Ministry of Industry and Trade (MIT) (such as dispatching rules or rules on compensation in instances of unauthorised consumption).

## 2 Organisation of the market

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

The Czech electricity market is composed of a single transmission system operator (TSO), distribution system operators (DSOs) (including local DSOs not directly connected to the transmission system), electricity generators, the market operator, electricity traders and customers.

Conducting business (transmission, distribution, generation, market operation and trading) requires that an appropriate licence be obtained from the ERO. Only one electricity transmission licence and one market operator licence is issued for the entire Czech Republic. The number of distribution, generation and trading licences that may be issued by the ERO is not limited.

Apart from the licence requirements, the TSO and the DSOs with over 90,000 connected customers must also comply with the unbundling rules. Specifically, the TSO ČEPS a.s. (CEPS) must hold a certificate of independence, issued by the ERO.

The Power Exchange Central Europe which trades certain products (such as futures, spot trades, day-ahead, intra-day) is regulated mainly by Act No. 229/1992 Coll., the Commodities Exchanges Act.

The company OTE, a.s. (OTE) serves as the market operator and, among other things, is responsible for the following: organisation of the short-term electricity market; settlement of account imbalances; preparation and publication of a monthly and annual report on the electricity market; and facilitation of payments of green bonuses and compensation payments to mandatory buyers under the subsidy scheme for renewable sources (described in question 5).

## Regulation of electricity utilities – power generation

### 3 Authorisation to construct and operate generation facilities

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

The construction of a generation facility typically requires obtaining (i) environmental consents (and impact assessment pursuant to Act No. 100/2001 Coll., on Environmental Impact Assessment, if necessary), (ii) zoning and construction permits pursuant to Act No. 183/2006 Coll., Building Act, and (iii) state authorisation for new generation facilities exceeding 1MW of output, issued by the MIT pursuant to the Energy Act.

Specific types of electricity generation facilities may require additional consents or opinions from various authorities. The construction of a 50MW generation facility would also typically require an integrated permit issued pursuant to Act No. 76/2002 Coll., on Integrated Pollution Prevention.

The construction of a new nuclear power plant is subject to a specific permitting procedure coordinated by the National Office for Nuclear Safety (SÚJB).

An electricity generation licence is required for operation of a generation facility. Compliance with the licence conditions stipulated in the Energy Act and Ordinance No. 8/2016 Coll., on the Details of Awarding Licences for Business within Energy Industries, is examined by the ERO and a licence for a maximum of 25 years is issued if all conditions are met.

Effective as of 1 January 2016, the production of electricity in power generation facilities with an installed capacity of no more than 10kW is exempted from the generation licence requirement, provided that the output of such facility is designated for the user's own consumption and no other power generation facility of a licence holder is connected to the point of consumption.

Further, effective as of 7 June 2017, a licence is not required for the use of electricity for operating a recharging station under Act No. 311/2006 Coll., the Fuel Act.

### 4 Grid connection policies

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

Grid connection policies are primarily regulated by the Energy Act, by Ordinance No. 16/2016 Coll., on Connection Conditions, and by the grid code issued by the TSO, as approved by the ERO. The TSO must provide grid connection services to anyone connected to the transmission network provided the pertinent conditions are fulfilled, unless capacity is demonstrably insufficient or unless the safe and reliable operation of the distribution or transmission grid is demonstrably jeopardised.

The mandatory contents of the application for grid connection are specified in the ordinance. The TSO may further require that a feasibility study for the grid connection be elaborated and submitted by the applicant.

Unless the grid connection cannot be approved on statutory grounds, the TSO will issue a grid connection contract. or if technical adjustments to the transmission network are required, a future grid

connection contract. The applicant shall pay compensation for the costs of grid connection in the maximum amount of 50 million koruna (approximately €1,860,000) within 15 days from the conclusion of the grid connection contract or future grid connection contract. Failure to pay the compensation within the deadline results in the termination of the grid connection contract, or future grid connection contract, and loss of capacity reservation.

## 5 Alternative energy sources

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

The regulation of renewable energy sources in the Czech Republic is based on EU policy and the climate change goals of the Kyoto Protocol. These goals are further specified in the SEP, pursuant to which at least 13 per cent of the gross consumption of electricity shall be produced by renewable energy sources by 2020.

Massive investments into renewable energy sources were promoted mainly by Act No. 180/2005 Coll. (the Old Supported Sources Act) which introduced a system of subsidies. The Old Supported Sources Act was superseded by Act No. 165/2012 Coll. (the Supported Renewable Sources Act), which changed the subsidy system.

There are two main types of subsidies, namely (i) a one-off investment subsidy for heating plants using renewable sources, and (ii) an operating subsidy. The operating subsidies are in turn of two kinds: green bonuses and the feed-in tariff. Separately, private individuals may receive a one-off investment subsidy for the installation of photovoltaic panels on family houses, which may also include an electricity storage component.

A generator who opts for green bonuses earns the amount agreed in the contract with the electricity trader for the electricity delivered and an additional green bonus from the market operator. In the case of the feed-in tariff, the generator receives the feed-in tariff from the so-called mandatory buyer, tendered or selected by the MIT.

Green bonuses and feed-in tariffs are determined by the ERO annually in its pricing decision, respecting the conditions stipulated in the Energy Act. Specifically, the green bonus or the feed-in tariff cannot exceed 4,500 korunas/MWh for the year in which the plant was first put into operation and an annual increase by at least 2 per cent is guaranteed, except for biomass or biogas plants. Further, the subsidy must ensure that a return on investment is achieved within 15 years.

Due to the development of a large number of solar power plants and the declining costs of technology, the Supported Renewable Sources Act introduced a special charge on solar power plants constructed between 1 January 2010 and 31 December 2010. This charge is payable from 1 January 2014 for the entire duration of the subsidy. The rate amounts to 10 per cent in the case of the feed-in tariff and 11 per cent in the case of green bonuses and is calculated based on the subsidy received.

The operating subsidy scheme applies only to renewable energy sources put into operation by 31 December 2013, unless the relevant renewable energy sources had a valid construction permit or authorisation from MIT as of 2 October 2013, in which case the subsidy will be granted if such source was put into operation by 31 December 2015.

Producers who are incorporated in the form of a joint-stock company (*akciová společnost*) may receive the subsidy only if their shares are dematerialised, ie, registered in the Central Securities Depository. If the producer is a foreign entity, an affidavit certifying the ownership structure of all shareholders owning at least 10 per cent of the share capital must be produced, including information on the source.

Due to the amendment of the Supported Renewable Sources Act, the calculation of the fee for the promotion of renewables is based on the capacity of the circuit breaker and is determined by the ERO, pursuant to Pricing Decision No. 7/2016 Coll., on Prices for Related Services in Electricity and Other Regulated Prices. The maximum fee amount is capped at 495 korunas/MWh for final consumers.

## 6 Climate change

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

The strategic goals of the Czech Republic in the energy sector and with respect to climate change are in line with the climate and energy

goals of the EU. The national climate change policy is defined by the National Programme to Abate the Impact of Climate Change in the Czech Republic (2004) (the Programme), which sets the main national targets and measures to ensure the effective curbing of greenhouse gas emissions, and sustainable development. In 2017, this Programme was replaced by a Policy for Climate Protection in the Czech Republic (the Policy), which defines the key goals and measures in the area of climate protection at the national level, reflecting the country's obligations under international agreements and treaties, including the United Nations Framework Convention on Climate Change and its Kyoto Protocol, the Paris Agreement, and the obligations arising from EU law. The Policy focuses on the period between 2017 and 2030, with a long-term outlook to 2050. Its implementation will be assessed by a review that is scheduled for the end of 2021, and an update of the Policy is slated for the end of 2023.

Regarding the expected impact of government policy (including in the field of climate change) on the types of resources that are used to meet electricity demand, the SEP generally anticipates that within the energy mix:

- the share of renewables and secondary sources will grow – primarily from energy from biomass and the utilisation of waste energy;
- until 2025, the share of high-grade brown coal (a major domestic energy source today) will drop substantially;
- all solid fuels will, to some extent, be replaced by natural gas;
- the production of black coal will markedly decrease;
- the share of nuclear energy will grow (nuclear generation facilities today provide over 33 per cent of total electricity production), and may in the long term exceed 50 per cent of all electricity production, thus replacing a substantial part of coal-powered generation facilities;
- the share of natural gas will grow (in spite of a 20 per cent decline in natural gas consumption over the past 10 years); and
- the consumption of crude oil (other than for transportation purposes) will not increase.

## 7 Storage

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

Currently, there is no legislation explicitly promoting or regulating electricity storage in the Czech Republic, although it is being discussed.

Nevertheless, as electricity storage solutions cannot be effectively put into place on a mass scale without investments into smart grid projects (such as smart metering), promotion of investments into such projects, by way of subsidies or otherwise, exists and it is expected that certain support to promote electricity storage will be put forward.

Currently, one of the incumbent energy utilities is investing in the construction of a pilot large-capacity electricity storage site in the Czech Republic which should be commissioned in November 2017, with possible expansions thereafter. Other companies are exploring this opportunity as well.

In recent years, a rising trend in discussing the topic can be observed in the form of expert conferences and articles along with research activities of various companies (including start-ups) and corresponding M&A activity. As noted above, private individuals may receive a one-off investment subsidy for the installation of photovoltaic panels on their family house, which may also include an electricity storage component.

## 8 Government policy

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

The National Action Plan for the Development of Nuclear Energy in the Czech Republic allows for the construction of one nuclear block at the Temelin Nuclear Power Plant (NPP) and one at the Dukovany NPP, with the possibility of extending it to two blocks at both NPPs. Similarly, the SEP describes nuclear sources as an important part of the generation mix, as outlined in question 6.

The company ČEZ, a. s. conducted a public procurement process, tendering the contractor for the engineering, design, and construction of two new blocks in the Temelin NPP. Due to a lack of price guarantees from the government, the public procurement process was terminated

in April 2014. Discussions regarding the extension of the existing NPPs (Temelin and Dukovany) are ongoing.

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## Regulation of electricity utilities – transmission

### 9 Authorisations to construct and operate transmission networks

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

Generally, the procedure described in question 3 applies in respect of construction permitting.

A significant amendment of the Building Act, Act No. 225/2017 Coll. (the Building Act), has been approved and becomes effective as of 1 January 2018. It introduces a coordinated proceeding which aims to merge procedures to obtain a building permit, a zoning decision and the decision on the environmental impact assessment into one coordinated procedure. This should effectively accelerate the overall duration of the permitting procedure.

Subject to meeting the conditions of the Energy Act, the TSO may use third-party property for the construction and maintenance of the transmission grid. If a TSO fails to reach an agreement with the owner of the property, the necessary rights for constructing or maintaining part of the transmission grid could be expropriated for compensation pursuant to the procedure under Act No. 184/2006 Coll., the Act on Expropriation.

Operating a transmission network requires an electricity transmission licence issued by the ERO. Currently, such licence may be issued for an indefinite period of time (or for a period of time not exceeding the period for which the TSO has the necessary rights for maintaining the devices required for the operation of the transmission grid) for the territory of the Czech Republic. Further, the TSO must comply with the unbundling rules which require the TSO to hold a certificate of independence issued by the ERO.

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### 10 Eligibility to obtain transmission services

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

Access to the transmission grid is briefly described in question 4. Generally, two different transmission services are provided, domestic and cross-border.

Transmission services are provided on the basis of an electricity transmission contract concluded between the TSO and electricity generators, distribution system operators or any customer.

Charges for capacity reservation and grid use are determined by the ERO in its annual pricing decision. The cross-border transmission capacities are based on the allocation available for trading in yearly, monthly and daily auctions. Specific rules apply for intraday allocations.

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### 11 Government transmission policy

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

At present, there is no specific tax benefit incentive for the expansion of the transmission grid. In general, according to the Energy Act, the TSO shall provide reliable and efficient operation and development of the transmission system.

The pricing mechanism described in question 12 should enable transmission grid investment in accordance with the 10 Year Network Development Plan.

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### 12 Rates and terms for transmission services

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

The rates and terms for transmission services for the regulatory period commencing on 1 January 2018 shall be determined by the ERO in accordance with the rules set out in the Energy Act and Ordinance No. 194/2015 Coll., on the Price Regulation and Price Control Procedures within Energy and District Heat Industries (Pricing Ordinance).

The price for transmission services is composed of fees for capacity reservation and transmission network use.

Principally, the same regulatory formula set out in the Pricing Ordinance remains in effect during the regulatory period (fixed for five consecutive years typically, or for three consecutive years for the regulatory period 2016–2018). Each year, the ERO announces certain parameters of the formula and thus changes the fees. The ERO shall announce the parameters at least five months before the regulatory year commences. In exceptional cases (eg, correction of mistakes in input data), the ERO may modify the parameters in the regulatory period or regulatory year.

By 10 October 2017, the ERO will have further announced to the TSO the calculated prices for transmission capacity reservation, transmission network use and system services.

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### 13 Entities responsible for grid reliability

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

CEPS, as the TSO, is solely responsible for the safe, reliable and efficient operation, repairs and development of the transmission network. At the same time, the DSOs may not, by their operation, impair the safe operation of the transmission network (eg, when considering the applications for access to the distribution networks).

To assure the operation of the transmission system, CEPS acquires ancillary services as a means to provide the system services. CEPS acquires the ancillary services predominantly on the basis of contracts concluded on an auction basis. Currently, there are approximately 20 providers of ancillary services to CEPS.

Pursuant to the Energy Act and the Pricing Ordinance, ERO calculates and announces the price of system services in its pricing decision. This price is then collected from the market participants and paid via regional DSOs (DSOs connected directly to the transmission network) and generators to CEPS.

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## Regulation of electricity utilities – distribution

### 14 Authorisation to construct and operate distribution networks

#### What authorisations are required to construct and operate distribution networks?

Generally, the same permits are needed for the construction of the distribution network, as described in Section 3 above. Unlike the TSO, the DSOs are subject to legal unbundling unless the respective DSO serves fewer than 90,000 customers. In the case of the construction of small parts, simplified construction permitting procedures may be used, thus accelerating the development process.

Subject to meeting the conditions of the Energy Act, the DSOs may use third-party property for the construction and maintenance of the distribution grid. If a DSO fails to reach an agreement with the owner of the property, the necessary rights for constructing or maintaining part of the distribution grid could be expropriated for compensation, pursuant to the procedure under the Act on Expropriation.

The DSOs are obliged to elaborate and comply with the National Network Development Plan ensuring the stability and safe operation of the grid.

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### 15 Access to the distribution grid

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

The DSOs are required to grant access on a non-discriminatory basis to anyone requesting such access, provided that the conditions of the Energy Act are complied with. If, however, the distribution capacity is demonstrably insufficient or the safe and reliable operation of the distribution or transmission grid is at risk, the DSOs may refuse to grant such access.

Apart from the Energy Act, the access rules are regulated by Ordinance No. 16/2016 Coll., on Conditions on Connection to the Power Grid, and by the grid code issued by the DSO, as approved by the ERO.

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

At present, there is no specific tax benefit incentive for the expansion of the distribution grid. In general, according to the Energy Act, the DSO shall provide reliable operation and development of the distribution system.

The pricing mechanism described in question 17 should enable distribution network investment in accordance with the 10 Year Network Development Plan. The investments are taken into account in the regulatory formula.

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

The rates and terms for distribution services for the regulatory period commencing on 1 January 2018 shall be determined by the ERO, in accordance with the rules set out in the Energy Act and the Pricing Ordinance.

Generally, the price for very high-voltage and high-voltage distribution services is composed of capacity reservation and distribution network use fees. Further, the price for low-voltage distribution services is composed of capacity reservation fees based on the main circuit breaker before the electricity meter and distribution network use.

Principally, the same regulatory formula set out in the Pricing Ordinance remains in effect during the regulatory period (fixed for five consecutive years typically, or for three consecutive years for the regulatory period 2016–2018). Each year, the ERO announces certain parameters of the formula and thus changes the fees. With the exception of certain parameters, the ERO shall announce the parameters at least five months before the regulatory year commences.

**Regulation of electricity utilities – sales of power****18 Approval to sell power****What authorisations are required for the sale of power to customers and which authorities grant such approvals?**

An electricity trading licence, issued by ERO, is required for the sale of power to customers. Apart from the Energy Act, Ordinance No. 8/2016 Coll., on Licensing Conditions, stipulates the precise requirements. An electricity trading licence is issued for a period of five years and the Energy Act does not set a maximum number of electricity trading licences that may be issued.

**19 Power sales tariffs****Is there any tariff or other regulation regarding power sales?**

The price for electricity for consumers is composed of two parts, regulated and unregulated (wholesale price of electricity).

The regulated part is set by the ERO pursuant to the Energy Act and the Pricing Ordinance and includes charges for transmission, distribution, system services, contribution for renewable energy sources, circuit breaker, etc.

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

The wholesale trading of power occurs mainly on the Power Exchange Central Europe and as such, no predetermined rates exist.

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

The Energy Act defines the so-called supplier of last resort as electricity traders who belonged to the same group of companies as the respective DSO holding the licence in the relevant territory before the unbundling procedure in the Czech Republic was completed.

Upon notification from the market operator, the supplier of last resort shall supply electricity to customers if the former supplier has terminated its activities. Such obligation persists for no longer than six months and the consumer shall pay for such supply of electricity.

Further, in a state of emergency, the entities active in the energy sector have various obligations, such as the generators offering unutilised generating capacities.

**Regulatory authorities****22 Policy setting****Which authorities determine regulatory policy with respect to the electricity sector?**

The Czech Republic, as a member of the EU, has the obligation to abide by the Common Energy Policy of the EU. Within this policy, the regulatory framework is established by laws which are passed by the Parliament of the Czech Republic, in the vast majority of cases based on government bills. The government bills are mainly prepared by the MIT in cooperation with the Ministry of the Environment, but all government departments may influence the bill. The bill is then negotiated, commented on and fine-tuned in parliament, and subsequently voted on. Finally, the bill is signed by the president and published in the Collection of Laws. If the bill is passed, it becomes a law binding on authorities, individuals and corporations.

The government also issues the SEP which is binding only on the authorities; however, it may also impact the private sector through the regional development policy, which in turn affects zone planning.

The ERO is also responsible for setting the policy (by issuance of ordinances) within the framework of legislation adopted by way of the above-described process.

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

The parliament and the government are responsible for the determination of the policy on a general level, including passing laws and issuing the SEP.

Only the MIT has the power to authorise the construction of power plants with a total installed capacity of 1MW or more. During the authorisation process, the MIT assesses, among other things, the contemplated power plant's compliance with the SEP, the national plan for the use of renewable energy, the prospects of infrastructure development and the power plant's influence on the balance of supply and demand for electricity. The MIT also has the right to provide its opinion on the national development policy and regional development principles, provide a binding opinion on the 10-year investment plans of the operator of the electricity transmission infrastructure, and a binding opinion on the construction of the electricity transmission infrastructure and power plants with a total installed capacity of 1MW or more.

The ERO's authority spans price regulation, the promotion of competition in the energy industry, energy market oversight, the promotion of renewable and secondary energy resources, the support of decentralised energy generation and the protection of the legitimate interests of regulated licensees. For example, it determines regulated components of the electricity prices, approves or sets the rules of operation of electricity transmission infrastructure and distribution networks, and the terms and conditions of the market operator, and approves the development plan of the electricity transmission network in cooperation with the MIT.

The State Energy Inspection is responsible for enforcing energy management obligations of the participants in the energy market pursuant to Act No. 406/2000 Coll., on Energy Economy.

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

The MIT is a part of the government. The head of the MIT, the minister, is nominated by the prime minister and appointed by the president.

The ERO is an independent, apolitical central state authority established by law. By law, it is independent of any and all political

bodies (the president, the parliament, the government), executive bodies, individuals and corporations.

An amendment to the Energy Act became effective on 1 August 2017. According to the amended Energy Act, the ERO is presided over by the board of the ERO. The board of the ERO consists of five members, one of which is appointed as the chairman of the board. Members and the chairman of the board are nominated by the government on the basis of a proposal from the MIT. Members will be in office for a five-year term, and the chairman of the board shall be appointed for a maximum three-year term. Following the above-mentioned amendment to the Energy Act, the government has appointed a new board of the ERO, effective as of 1 August 2017.

The ERO is funded collectively by the energy market participants, which makes it less dependent on the state budget and political pressure.

## 25 Challenge and appeal of decisions

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

Decisions binding on individual entities issued by the above authorities may be challenged by an appeal to the very authority that issued them; the process is governed by Act No. 500/2004, the Administrative Code. If the appeal is not successful, the appellant may file an administrative action with an administrative court. A full-court review principle allows courts to fully review a decision handed down by the relevant authority. Further, the court's decision may be appealed to the Supreme Administrative Court on points of law; however, an appeal on points of law does not suspend the legal effects of the previous decisions.

The ERO sets prices through price decisions in the form of decrees and therefore, as also confirmed by lower courts, there is (as yet) no possibility of appealing such decisions.

The ERO also decides on commercial disputes between two or more businesses participating in the energy market and disputes between businesses in the energy industry and consumers. There are also ordinary remedies available against the ERO decisions in these matters. Moreover, the matter, even if finally decided by the ERO, may be submitted to a civil court. The matter is then reviewed by the courts which have civil jurisdiction (ordinary appeal and an extraordinary appeal on points of law are available).

## Acquisition and merger control – competition

### 26 Responsible bodies

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

The Office for the Protection of Competition (OPC) is exclusively competent to decide on all competition matters in the Czech Republic, including acquisitions. The OPC cooperates with other regulators which may provide insight into the industries they regulate. In this case, the OPC closely cooperates with the ERO in order to assess the impacts of transactions between competitors on the energy markets. In addition, since the Czech Republic is a member state of the EU, the European Commission, instead of the OPC, is competent to decide on mergers if the relevant thresholds are exceeded, or if the merger is referred from the OPC to the European Commission at the request of parties to the transaction, provided that the merger is capable of being reviewed under the national competition laws for the control of mergers of at least three member states of the EU.

### 27 Review of transfers of control

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

Under Czech law, a merger is subject to OPC approval if the combined aggregate net turnover generated by all participating undertakings in the Czech Republic in the preceding financial year is more than 1.5 billion korunas (approx. €60 million), and the aggregate net turnover

generated in the Czech Republic by each of at least two of the undertakings in the preceding financial year is more than 250 million korunas (approx. €10 million). A merger that does not exceed these thresholds is nevertheless subject to approval if (i) in the case of a merger or establishment of a fully functioning joint venture, the aggregate net turnover of one of the participating undertakings, and (ii) in the case of an acquisition, the aggregate net turnover of the target generated in the Czech Republic, is more than 1.5 billion korunas (approx. €60 million) and the worldwide aggregate net turnover of another participating undertaking is more than 1.5 billion korunas (approx. €60 million). The Czech Competition Act does not provide for any deadlines within which a notification shall be made. However, without the OPC's approval, the merger in question may not be implemented, ie, no rights or powers arising from a non-notified merger may be exercised until approval is granted. However, the parties to the transaction may request the OPC to provide an exemption from the aforementioned prohibition in case of threat of grave damage to them, or to third parties, and the OPC shall decide on the application within 30 days.

The application, which is subject to a 100,000 koruna fee, must be submitted in Czech and must contain, among others, the reasoning behind the merger and, in particular: (i) relevant arguments justifying the conclusion that the intended merger would not significantly impede competition in the Czech Republic; and (ii) modifications or commitments aimed at preserving effective competition in the relevant market in the Czech Republic, if proposed by any of the undertakings concerned.

If the OPC concludes that the notified concentration does not require its approval, it shall issue that finding by means of a decision within 30 days of the commencement of the proceedings. Similarly, if the OPC finds that the notified merger, although requiring its approval, is not capable of significantly impeding competition in the Czech Republic, it shall approve the merger within the same period.

If, within 30 days of the commencement of the proceedings, the OPC does not render its decision or inform the applicant that a more thorough review of the transaction is required, the notified merger is deemed to have been approved upon the expiration of the last day of such period. If the OPC informs the participating undertakings that a more thorough review of the transaction is required because it raises competition concerns and continues with the merger proceedings, the OPC is obliged to issue a decision approving or blocking the merger within five months from the commencement of the merger proceedings. The OPC may require that the applicant submit further evidence related to the concentration, in which case the 30 days or five months period (as applicable) is suspended until the applicant has complied with such request.

Similar to the proceedings before the Commission described above, the Czech Competition Act also provides for a simplified procedure in cases that do not give rise to serious competition concerns. This typically applies to conglomerate mergers, ie, mergers of undertakings that are active in different markets and whose activities only slightly overlap. In the simplified procedure, the notifying party submits a simplified application, which requires much less information in comparison to the regular questionnaire. Moreover, the period of 30 days described above is reduced to 20 days.

### 28 Prevention and prosecution of anti-competitive practices

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

It is one of the ERO's obligations to analyse competition on the energy market. However, the ERO itself is only authorised to prosecute anti-competitive or manipulative practices directed against consumers, and cases of violation of price regulation. All other cases of anti-competitive behaviour, including anti-competitive practices damaging other competitors, are prosecuted by the OPC. The European Commission prosecutes cases damaging or distorting the EU internal market.

### 29 Determination of anti-competitive conduct

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

Behaviour considered to be anti-competitive conduct damaging consumers is defined in Directive 2005/29/EC concerning unfair

### Update and trends

Recently, the incumbent energy companies have been re-evaluating their business models and undergoing transformations with the goal of tapping into new sources of revenue (such as services helping consumers to achieve energy efficiency, development of smart applications and metering, and provision of financial, insurance and consulting services to consumers) in order to protect against electricity price volatility and adjust to ever increasing regulatory requirements.

New energy companies, focusing on energy-saving solutions, renewable energy and smart solutions have emerged and some of them have successfully established a strong market presence.

The legal framework is somehow lagging in response to new technologies, including electricity storage solutions, and it remains to be seen what approach will be taken.

Recent changes in the governance structure of the ERO may foreshadow a different approach of the ERO towards market regulation. Finally, discussions over new tariff mechanisms will inevitably be one of the most debated topics in the coming years.

business-to-consumer commercial practices and in Czech Act No. 634/1992 Coll., Protection of Consumers Act, and may consist of aggressive or misleading commercial practices towards consumers. The ERO is responsible for prosecuting and preventing such practices.

Pursuant to articles 101 and 102 of the Treaty on the Functioning of the EU, other cases of anti-competitive behaviour include behaviour whose purpose or effect is the distortion, prevention or restriction of competition. Such behaviour may take the form of agreements between competitors, decisions adopted by an association of competitors, simple concerted business conduct or abuse of dominant position. Czech laws define anti-competitive behaviour in a similar, yet more detailed manner.

### 30 Preclusion and remedy of anti-competitive practices

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

The relevant authorities may in all cases impose fines on the perpetrators of anti-competitive behaviour. Agreements or concerted business conduct which are in violation of the principles or goals of competition are invalid by law.

In terms of mergers under Czech law, a merger may not be implemented prior to the effectiveness of OPC approval. Until such approval has been granted, the relevant merger is virtually ineffective in the sense that the acquiring undertaking may not effectively exercise control (voting rights, etc) over the acquired undertaking. However, the failure to refrain from carrying out an unapproved merger does not render the transfer of the controlling shareholding invalid or void.

In addition, if the OPC finds that the undertakings have implemented the merger without due notification, it may impose on them the duty to (i) sell the shares or interests in the acquired undertaking, (ii) transfer the acquired enterprise or a part thereof, or (iii) rescind the underlying agreement. The OPC may further impose on the infringing undertakings monetary sanctions up to the amount of 10 million koruna (approx. €400,000) or up to 10 per cent of the infringing undertaking's turnover for the previous year – if the infringing company belongs to a group of companies and the group parent company exercised decisive influence over the infringing undertaking's conduct at the time of infringement, the turnover for the purpose of calculation of the sanctions is calculated as group turnover. Such sanctions may be imposed repeatedly.

A new Act, No. 262/2017 Coll. on Damages for Infringements of the Competition Law, has been enacted, transposing Directive 2014/104/EU of the European Parliament and of the Council (Directive on Antitrust Damages Actions), which sets to remove practical obstacles to compensation for all victims of infringements of EU antitrust law. Under the new regime, victims will be entitled to full compensation for the harm suffered, which covers compensation for actual loss, as well as for loss of profit, and for interest from the time the harm occurred until compensation is paid. Any participant in an infringement will be responsible towards the victims for the whole harm caused by the

infringement, and if there are multiple infringers, they will be jointly and severally liable. A special rule applies to infringers who obtained an immunity from fines in return for their voluntary cooperation with a competition authority during an investigation, and who will normally be obliged to compensate only their (direct and indirect) customers. In addition, a narrow exception from the joint and several liability may apply to SMEs that would go bankrupt as a consequence of the normal rules on liability, subject to further restrictions.

Moreover, the new regime establishes (i) a rebuttable presumption that cartels cause harm, (ii) new rules on discovery, allowing a party requiring documents that are in the hands of other parties or third parties in order to prove a claim or a defence to obtain a court order for the disclosure of those documents, and (iii) a clear limitation period of five years for victims to bring damages claims, starting from the moment they had the possibility to discover that they suffered harm from an infringement. This period will be suspended or interrupted if a competition authority starts infringement proceedings, and will resume one year after the competition authority's infringement decision becomes final.

### International

#### 31 Acquisitions by foreign companies

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

As a result of unbundling rules, acquiring an interest in certain entities active in the energy sector may also be subject to additional approvals and certification procedures for entities active in the energy sector. These limitations would apply to domestic and international buyers.

Further, the Czech Republic wishes to retain full ownership of certain entities, such as OTE and ČEPS, and majority ownership of ČEZ, a. s., thus limiting the possibility of acquiring shares or control in these entities.

#### 32 Authorisation to construct and operate interconnectors

##### What authorisations are required to construct and operate interconnectors?

So far no special rules on constructing and operating interconnectors have been adopted in the Czech Republic. General provisions on the construction of the electricity network are applicable in this area. The EU has set the target of achieving interconnection of at least 10 per cent of installed electricity production capacity for all member states. The Czech Republic achieved interconnection of 17 per cent of installed capacity in 2014 (source: ENTSO-E, Scenario Outlook and Adequacy Forecast 2014).

#### 33 Interconnector access and cross-border electricity supply

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

The interconnection issues are primarily regulated by the Energy Act, by Ordinance No. 16/2016 Coll., on Conditions on Connection to the Power Grid, and by the grid code issued by the TSO, as approved by ERO. The TSO must provide interconnection services to anyone connected to the transmission network provided that the pertinent conditions are fulfilled, unless capacity is demonstrably insufficient or the safe and reliable operation of the distribution or transmission grid is demonstrably jeopardised.

Cross-border transmission services (yearly, monthly and day-ahead allocations) are provided on the basis of auctions organised by the Joint Allocation Office (JAO) under its rules.

Since 2014, the so-called CZ-SK-HU-RO Market Coupling (market coupling of Czech, Slovak, Hungarian and Romanian day-ahead electricity markets) has been in operation.

Further, EC Regulation 714/2009 sets forth the conditions for access to the network for cross-border exchanges in electricity. Obligations under the regulation are further specified in network codes developed by the European Network of Transmission System Operators for Electricity issued in the form of EU regulations. An important network code with respect to interconnectors is EU Regulation 2015/1222, establishing a guideline on capacity allocation and congestion management.

EU Regulation 347/2013 on guidelines for trans-European energy infrastructure (the PCI Regulation) introduced projects of common interest (PCIs). Subject to determination by the EU Commission, certain infrastructure projects relevant to overall infrastructure capacity and security of supply may be awarded the PCI status. The PCI Regulation aims to facilitate the timely implementation of PCIs by streamlining, coordinating and accelerating permit-granting processes and by enhancing public participation. In the Czech Republic, this is currently achieved by means of a coordinated scheme envisaged by the PCI Regulation, where individual permitting proceedings and relevant deadlines are supervised by the MIT. Currently, the list of PCIs is being updated and the consultation process for the third list of PCIs has been launched. The coordinated proceedings (with an environmental impact assessment, if required) under the PCI Regulation are newly reflected in the amended Building Act.

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#### Transactions between affiliates

##### 34 Restrictions

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

Pursuant to Act No. 90/2012 Coll., Business Corporations Act, transactions between related entities are generally no longer strictly regulated from the corporate point of view.

The only exception applies to joint stock companies acquiring property whose value exceeds 10 per cent of their registered capital from their founder or shareholder within two years from their establishment. Such transactions must be approved by the general meeting of shareholders and the consideration may not exceed the property value, as determined by the appraiser. These conditions do not apply if the transaction is conducted within the ordinary course of business, under the supervision of a regulatory authority or on the regulated market.

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##### 35 Enforcement and sanctions

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

If the aforementioned formal restrictions are not fulfilled, a company's shareholders are entitled to claim the invalidity of the respective transaction in civil courts. Moreover, the failure to comply with certain formal restrictions represents a breach of the obligation to act with due managerial care by the members of the statutory body of the company, resulting in potential claims of damage being incurred by the company. Such damage can be claimed by the company itself or, in cases determined by law, the company's creditors.

The sanctions for noncompliance are of a private law character and may include the invalidity of the transaction and reimbursement of damage.

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