

# Gas Regulation

*Contributing editors*

David Tennant and Adam Brown



2018

GETTING THE  
DEAL THROUGH 

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*Contributing editors*

David Tennant and Adam Brown  
Dentons UK and Middle East LLP

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# Preface

## Gas Regulation 2018

Sixteenth edition

**Getting the Deal Through** is delighted to publish the sixteenth edition of *Gas Regulation*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

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

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

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

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

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

GETTING THE  
DEAL THROUGH 

London  
February 2018

# Turkey

Zeynep Çakmak, Mustafa Durakoğlu and Ayşe Eda Biçer

Çakmak Avukatlık Ortaklığı

## Description of domestic sector

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

Despite the Turkish government's efforts since 2001 to progressively liberalise the natural gas market in Turkey, the natural gas sector largely remains under government control owing to its strategic importance in industrial and economic growth. The ongoing rapid increase in Turkey's demand for natural gas is mainly the result of gas-fired electricity generation, despite the government's attempt to reduce the use of natural gas in electricity generation by emphasising alternative sources, including domestic coal and renewable and potential nuclear energy.

A major step towards liberalisation was made in 2001 with the introduction of the Natural Gas Market Law (Law No. 4646, published in the Official Gazette No. 24390, dated 18 April 2001) and the establishment of the Energy Market Regulatory Authority (EMRA), an independent regulatory authority responsible for the regulation and supervision of the energy market in order to ensure a strong, competitive and transparent environment.

In gas production, although the number of private players is growing, the state-owned Turkish Petroleum Corporation (TPAO) remains the dominant market participant in exploration and exploitation activities. The majority of 2016 natural gas production, amounting to a total of 367.28 million standard cubic metres, was produced by TPAO and Thrace Basin Natural Gas Corporation. The Turkish Petroleum International Company, founded by TPAO, is another state-owned company that engages in natural gas exploration and production and is active both domestically and internationally. There are also private companies engaged in oil and natural gas upstream activities on their own or partnering with TPAO.

As Turkey's natural gas production is very small, it depends almost entirely on gas imports to meet its demand. The Petroleum Pipeline Corporation (BOTAŞ) is Turkey's state-owned gas trade and transmission company, which imports its gas on the basis of several long-term contracts for the supply of gas from Algeria, Azerbaijan, Iran, Nigeria and Russia. BOTAŞ's share of gas imports in 2016 was 81.02 per cent, and the remaining share was realised by several private companies holding import licences. The Turkish Stream and the Trans-Anatolian Natural Gas Pipeline are major ongoing projects for the construction of natural gas pipelines designed to deliver gas to Turkey from Russia and Azerbaijan respectively.

Although the monopoly rights of BOTAŞ on import, distribution, sales and pricing were abolished by the Natural Gas Market Law in 2001, BOTAŞ still holds a dominant position in the natural gas wholesale market and a monopoly in national grid transmission activities. With regard to the storage of natural gas, there are currently six companies holding a storage licence: three of these are underground storage licences, two are LNG storage licences and BOTAŞ has both an underground and an LNG storage licence. The three companies holding underground storage licences do not have any operational storage facilities yet; the only two operational underground storage facilities are owned and operated by BOTAŞ in Silivri and Salt Lake. Construction of the three facilities is ongoing and there are pending capacity increase projects in respect of BOTAŞ's underground gas

storage facilities, which is considered as one of the strategic targets of the government for gas security. With regard to LNG storage licences, BOTAŞ and two private companies have operational LNG storage facilities, one of which is a floating storage and regasification unit (FSRU). Other than these, BOTAŞ will activate another FSRU in 2018.

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

The figures issued by TPAO indicate that Turkey's energy needs in 2015 were met as follows:

- natural gas: 31 per cent;
- coal: 27 per cent;
- oil: 30 per cent; and
- renewable and other sources: 12 per cent.

According to EMRA's 2016 Natural Gas Market Sector Report, in 2016, domestic production met only 0.79 per cent of Turkey's natural gas demand and 99.21 per cent was met by imports.

## Government policy

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

While the Turkish Ministry of Energy and Natural Resources (MENR) is responsible for high-level energy policies and strategies, the natural gas sector is widely regulated and supervised by EMRA, an independent regulatory authority.

The government's main policy in the natural gas sector is to incrementally liberalise and deregulate the oil and gas sectors to ensure supply security and competitive prices. One of the government's long-term objectives is to end the vertically integrated structure of state-owned natural gas company, BOTAŞ and to develop the natural gas market in a direction that renders Turkey an international trading hub. As part of the restructuring of BOTAŞ and the liberalisation of the natural gas market, BOTAŞ is expected to issue further tenders to transfer existing natural gas sale or purchase agreements to private investors until its total import rate falls to 20 per cent of the annual national consumption. However, only very limited progress has been made in this regard, and BOTAŞ maintains its dominant position in the market.

See question 1 regarding the liberalisation of the natural gas market and the government's policy objectives in this regard.

## Regulation of natural gas production

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

Pursuant to the Constitution of the Republic of Turkey, natural resources are at the disposal and control of the state. The state may delegate the right to explore and exploit resources to individuals or private corporations for a certain period of time by issuing licences subject to the payment of a royalty to the state. TPAO has the right to receive exploration and exploitation rights in the name of the state.

Both foreign and domestic private companies may engage in natural gas exploration and production activities on the basis of licences issued by the General Directorate of Petroleum Affairs (GDPA) in accordance with the Turkish Petroleum Law No. 6491 published in the Official Gazette No. 28674, dated 11 June 2013 (the Petroleum Law), which regulates, inter alia, oil and natural gas exploration and production activities. Whereas licence applications are generally made to GDPA, the granting of exploration and operation licences in the seas beyond territorial waters are subject to the approval of the Council of Ministers. Licence holders may sell the natural gas that they have produced in the domestic market and are also entitled to export 35 per cent of the natural gas that they have produced from onshore fields and 45 per cent from offshore fields.

The Petroleum Law requires licence holders to pay the state an annual fixed amount per hectare for each exploration area and a 'state share' amounting to one-eighth of the natural gas extracted and stored, which is the only royalty requested by the government from the produced natural gas.

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

Natural gas market activities are governed by the Natural Gas Market Law, and its secondary legislation. The Natural Gas Market Law regulates midstream and downstream operations, but excludes upstream activities, which are regulated by the Petroleum Law. Midstream and downstream natural gas market activities comprise import, transmission, storage, wholesale, distribution and export; whereas upstream activities include exploration and production. All participants in the natural gas market are required to obtain a licence from the GDPA or EMRA, depending on the type of market activity they wish to undertake.

With regard to natural gas transmission, the transmission network is owned and operated by BOTAŞ and transportation activities are regulated under the BOTAŞ Transmission Network Operation Principles (the Network Code), which sets out the rules and principles on access and the operation of the transmission network. The Network Code is issued and implemented by EMRA.

The following bodies are involved in the supervision and regulation of natural gas exploration and production:

- MENR is responsible for preparing and implementing high-level energy policies, strategies and plans in coordination with its affiliated institutions and other public and private entities;
- EMRA is an independent regulatory and supervisory authority responsible for the implementation of relevant laws pertaining to the energy sector, including all natural gas market activities under the Natural Gas Market Law. The main tasks of EMRA include the examination of licence applications for all midstream and downstream natural gas market activities and the granting of licences and the issuance of secondary legislation in the relevant energy sector. EMRA is allowed to cancel licences in certain cases detailed in respective laws and replace the managing bodies of licence holders either partially or entirely; and
- GDPA is affiliated with MENR and is responsible for ensuring the efficient utilisation of oil and gas fields and granting oil and gas exploration and exploitation licences. In this regard, GDPA is also the authority responsible for monitoring drilling activities.

Pursuant to Turkish administrative law, all administrative entities must use their authority within the limits of the law. As such, all administrative acts of government entities, including the above-mentioned authorities, may be challenged before administrative courts in accordance with administrative procedure rules.

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

Licences for the exploration and production of natural gas are issued in accordance with the Petroleum Law and the Regulation on the Implementation of the Turkish Petroleum Law. Applicants are obliged to provide a security for, inter alia, losses that may occur during exploration activities (currently 0.1 per cent of the exploration licence fee per hectare) and the investment amounts presented in the work plan (2 per cent of their investment amount). These amounts may

be increased or decreased by the Council of Ministers. Exploration licences for certain exploration areas that may be determined by the GDPA are granted only through tenders issued by the GDPA. The security to be provided in these cases is indicated in the relevant tender specifications issued by the GDPA.

The procedures regarding natural gas storage licences are set out in the Natural Gas Market Law and the Natural Gas Market Licensing Regulation, published in the Official Gazette No. 24869, dated 7 September 2002 (the Licensing Regulation), which does not require the provision of a security by the applicants. However, once the licence application is approved, applicants must pay a fixed application fee and an annual licence fee that is relative to the market activity in question and must also obtain comprehensive risk insurance on the facility.

#### **Regulation of natural gas pipeline transportation and storage**

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

The national transmission network is currently owned and operated by BOTAŞ, and transportation activities, including interconnections, are regulated under the Network Code, which sets out the rules and principles on access and the operation of the transmission network.

Owing to the fact that supply security is an important issue in the natural gas sector, natural gas storage is regarded as essential to minimising dependence on imports and ensuring the sufficient and continuous supply of gas to meet seasonal changes in demand. Therefore, the government gives special importance to projects regarding storage activities. However, although a number of private companies have obtained storage licences, some of the storage facilities have not yet become operational. The two underground storage facilities operated by the state-owned BOTAŞ are currently the only active ones. There are currently three LNG storage facilities, two onshore and one offshore, in Turkey. One of the onshore facilities is operated by BOTAŞ, the other onshore facility, as well as the single offshore facility, are operated by private companies. The Natural Gas Market Law further provides that entities duly licensed to engage in exploitation activities in accordance with the Petroleum Law that wish to utilise their underground natural gas facilities for storage may apply to EMRA in order to have part of their exploitation licence changed into a storage licence.

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

The construction and operation of pipelines require several licences including, but not limited to, licences issued by EMRA and GDPA, construction licences; land allocation decisions to be issued by the relevant municipalities and ministries; and environmental impact assessment decisions to be rendered by the Ministry of Environment and Urban Planning. Investors will also be required to obtain additional administrative and environmental permits, such as for waste management, pollution control and workplace operations. The Natural Gas Market Law further states that licence holders wishing to enter into a construction or services agreement pertaining to the natural gas market may only do so with entities that are certified by EMRA. As all decisions relating to such licence and permit applications are adopted by administrative bodies, they constitute administrative actions that may be challenged before administrative courts in accordance with Turkish legislation on administrative procedure.

As explained above, the transmission network is currently owned and operated by BOTAŞ and transportation activities including interconnections are regulated under the Network Code.

Transit pipeline projects, however, are subject to different regimes, which are normally subject to international treaties as well as local requirements explained above.

##### **9 How does a company obtain the land rights to construct a natural gas transportation or storage facility?**

The Natural Gas Market Law contains general rules on expropriation and incorporeal rights on property. Accordingly, where natural gas market activities deem it necessary, expropriations may take place in line with the rules of the Expropriation Law No. 2942, published in the Official Gazette No. 18215, dated 4 November 1983. EMRA may issue

decisions on such necessity, which are considered evidence of a public interest. Whereas the ownership of the expropriated land will be transferred to the Turkish treasury, the company will be responsible for the payment of the expropriation compensation and will obtain usufruct rights. Companies may also request the establishment of an incorporeal right or a lease on the land belonging to the state, provided that the company pays the relevant fees.

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

Access to the network and infrastructure is considered crucial for ensuring sustainable competition in Turkey and is provided for in the Natural Gas Market Law.

The Regulation on the Natural Gas Market Grid Operation, published in the Official Gazette No. 24918, dated 26 October 2002, governs access to the network and requires the grid operator and distribution companies to ensure access to the network. The Network Code of BOTAŞ was based on this regulation and constitutes the main regulatory document in this regard.

The Natural Gas Market Law further provides that licence holders for storage activities must ensure that their respective storage capacities are utilised in a coordinated manner and that services are provided fairly. Access to storage facilities is regulated by specific regulations. Pursuant to the Regulation on the Main Usage Principles and Procedures of Underground Natural Gas Storage Facilities, published in the Official Gazette No. 27954, dated 4 June 2011, as well as the Regulation on the Main Usage Principles and Procedures of Underground Liquefied Natural Gas Storage Facilities, published in the Official Gazette No. 27230, dated 16 May 2009, storage companies must prepare a document setting out the principles and procedures regarding storage services of a given storage facility. These principles shall include a list of documents required for access, operating conditions, rules on balancing and adjustment, rates and prices, etc. This document must be approved by EMRA. The applicable rates and prices are set in accordance with the principles and procedures issued and announced by EMRA.

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

Suppliers can require expansion of storage facilities. Pursuant to the Licensing Regulation, access to storage facilities may not be rejected if the user seeking connection to the system accepts covering necessary investment expenses. Similarly, the Network Code regulates that applicants wishing to connect to the transmission network bear the cost regarding the construction of a pipeline for the extraction of natural gas from the system.

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

The Network Code regulates the rights, obligations and general conditions pertaining to the pipeline transportation of natural gas via the transmission network operated by BOTAŞ. The Network Code includes rules on access to the system, the required quality specifications of the natural gas entering the system, capacity allocation and delivery control, etc. It also contains provisions relating to gas control centres, which ensure the continuity of natural gas transmission activities, inter alia, control and monitoring of pressure and measuring stations.

**13 Describe the contractual regime for transportation and storage.**

The Network Code regulates the rights and obligations of the parties concerning the transportation of natural gas via the transmission network. The rights and liabilities of the parties to gas import and supply contracts other than the ones executed with BOTAŞ may be freely agreed upon by the parties, whereas gas sale, transportation and delivery contracts must be in compliance with certain aspects of the Network Code related to transport and delivery terms and conditions for natural gas in Turkey. The shipper must execute a transportation contract and

a delivery contract with BOTAŞ in accordance with the Network Code if the final delivery point is outside of a distribution region. If the final delivery point is located within a distribution region, on the other hand, the shipper must execute transportation and delivery contracts with the respective distribution company as well. The Network Code becomes an integral part of such agreements. Transportation agreements must also be in accordance with principles and procedures determined by EMRA and shall not contain any provision that may hinder the effective functioning of the system.

The same is also true for storage activities. The rights and obligations of the parties in relation to storage of natural gas are set out in the principles and procedures regarding storage services published by each storage company and approved by EMRA.

In addition, the Natural Gas Market Tariffs Regulation, published in the Official Gazette No. 29856, dated 13 October 2016, regulates the procedures for determining applicable tariffs for natural gas market activities.

**Regulation of natural gas distribution**

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

Pursuant to the Natural Gas Market Law, local distribution services of natural gas are provided by private entities that have obtained a distribution licence through tenders initiated for set distribution areas determined by EMRA. Rules concerning the distribution licence and the tender procedure for designating a distribution company are set out in the Natural Gas Market Distribution and Customer Services Regulation, published in the Official Gazette No. 24925, dated 3 November 2002 (the Customer Services Regulation). Accordingly, private companies that are successful in such distribution licence tenders also obtain the ownership of the natural gas distribution network for the term of their licences. The distribution network used to be state-owned; however, all of the distribution regions have been privatised since the enactment of the Natural Gas Market Law in 2001.

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

The distribution of natural gas is a market activity as set forth by the Natural Gas Market Law and is therefore subject to licensing. Legal entities that have obtained a distribution licence from EMRA by way of a tender procedure or upon privatisation are obliged to comply with the provisions set out in the relevant legislation published by EMRA. Licensed distribution companies are responsible for the planning, design, construction, extension and operation of the distribution network and must ensure that subscribers and eligible consumers have effective access to the network, all of which can be categorised as their public service obligations.

All decisions and acts of EMRA as the regulatory authority in the energy sector may be challenged before administrative courts in line with Turkish legislation on administrative law and procedure. However, in respect of EMRA's tender procedure for granting distribution licences, the Customer Services Regulation contains an exception exempting EMRA from liability for its decisions in rejecting bids or cancelling tenders.

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

The principles and procedures relating to the distribution services and customer relations of distribution utilities are set out in the Customer Services Regulation. A distribution utility is obliged to provide access to customers located in its distribution area who have duly applied to the utility for connection, unless it lacks capacity, or the connection is not possible for technical or economic reasons. Applicants must ensure that they have adequate domestic installations in place. If the application is rejected by the distribution utility, applicants may appeal to EMRA, which shall review the circumstances and render a decision that is binding on the distribution utility.

The Natural Gas Market Tariffs Regulation contains provisions on different tariffs applicable in the natural gas market. Each year, EMRA determines the applicable threshold values regarding connection and distribution service fees that companies may charge their subscribers. Accordingly, prices for distribution services applied by each distribution company are subject to EMRA's approval.

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

The Customer Services Regulation requires distributors to ensure that their capacity meets the demand in their respective distribution areas. They are required to undertake the investments necessary to expand their distribution systems to accommodate new subscribers. In this regard, distributors must take account of annual subscription forecasts and locations that remain outside of the network's reach.

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

The distribution of natural gas to end users is effected on the basis of subscription agreements concluded between customers and the distribution utility. Pursuant to the Customer Services Regulation, distributors conclude standardised agreements that shall not contain any provision contrary to relevant legislation. The principles concerning the determination of retail sales prices are set out in the Natural Gas Market Tariffs Regulation.

**Regulation of natural gas sales and trading**

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

Pursuant to the Natural Gas Market Law, all participants in the natural gas market are required to be licensed for each market activity they undertake. The licences can only be obtained by Turkish limited liability companies. In order to sell natural gas, traders must hold one of the import, wholesale or distribution licences, and to buy natural gas, they must have one of the import, export, wholesale, compressed natural gas (CNG) (which can include transmission, distribution and supply of CNG), or distribution licences or be qualified as an eligible consumer.

**20 To what extent are natural gas supply and trading activities subject to government oversight?**

EMRA has extensive supervisory powers over natural gas supply and trading activities by regulating and inspecting the markets (including the applicable prices and tariffs) and imposing sanctions on the market players as well as cancelling licences in certain cases detailed in respective laws.

EMRA also has the right to set base and ceiling prices regionally or nationally for retail petroleum and LPG prices for periods not exceeding two months, if it deems that agreements or concerted practices in the petroleum and LPG markets take place to restrict or violate the competitive environment in the market. EMRA has used this power three times so far (June to August 2009, March to May 2014 and February to April 2015) by determining the ceiling price for certain petroleum products and deciding on the amount of the profit margins and the share of the margin between the distributors and the dealers.

In addition to the general oversight of EMRA, the Natural Gas Market Law provides for certain market share restrictions on import and wholesale activities. The total sales volume of a wholesale or import company (under one or more import licences) may not exceed 20 per cent of the national consumption forecast for such calendar year as determined by EMRA. This restriction does not apply to BOTAŞ. The annual quantity of natural gas that an import company may import (under one or more import licences), also may not exceed 20 per cent of the total estimated national consumption in that calendar year as announced by EMRA.

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

A physical sale of natural gas within the Turkish natural gas market first requires a natural gas sale contract executed between the parties. The seller must hold either an import or wholesale licence and the buyer

must be either an eligible customer or an entity holding an import, export or wholesale licence. Eligible consumers are those customers who are entitled to choose their supplier. EMRA sets and announces the eligible consumer threshold every year. In accordance with the existing EMRA resolutions, all consumers, except for residential consumers, are eligible. For residential consumers, the eligibility threshold for 2018 is set at 75,000 cubic metres.

The terms of natural gas sale contracts can be agreed upon freely between the parties. There are, however, certain regulations that govern the rights and obligations of the parties within the context of the transportation and delivery of natural gas, and therefore must be referred to in the contracts.

The main piece of legislation with which natural gas sale contracts must conform in certain aspects is the Network Code, in BOTAŞ's capacity as the operator of the transmission network. The Network Code regulates the rights and obligations of the seller as the 'shipper' of the natural gas and BOTAŞ as the 'transporter' of the natural gas to either the facilities of the buyer or the station of the distribution company (if the buyer is located within the region of a distribution company). The process for the delivery of natural gas to the buyer differs depending on the location of the buyer's facilities.

The financial trading of natural gas is currently not possible. On 31 March 2017, the EMRA published the Natural Gas Organised Wholesale Market Regulation, introducing a regulated spot market for trading of natural gas that will be operated by Energy Markets Operation Corporation (EPIAŞ). Like the existing electricity market structure, the Regulation aims to create an organised natural gas spot market where market participants will be able to sell and purchase natural gas, and remedy their imbalances by way of day-ahead, intraday and post-day trades. EPIAŞ will manage operation of the market through an electronic platform called the 'continuous trading platform'. Before the spot market becomes fully operational, a simulation will be launched on 1 April 2018 to ensure proper operation on various market scenarios. The expected date of operation is 1 September 2018. However, owing to the troublesome conditions that the natural gas market is currently experiencing (as explained below), the operation date is considered questionable by the market actors.

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

The Natural Gas Market Law does not require the purchase of bundled products; thus, buyers who qualify as eligible consumers can purchase freely from competing providers. However, BOTAŞ has a legal monopoly in respect of the transmission of natural gas owing to its position as the operator of the national transmission network, and each distribution region has a single natural gas distributor from whom the end users (who are not qualified as eligible consumers) are required to purchase both the natural gas commodity and the distribution services.

With an amendment made to the Natural Gas Market Licence Regulation on 24 May 2017, additional provisions have been introduced for expanding the use of CNG, by enabling its transport by highway and its sale to consumers located at districts outside the transmission network. To this end, a different licence type, referred to as a 'CNG auto-gas licence' has been introduced and CNG sale licence holders have been enabled to change their licences to a CNG autogas licence without any additional cost or change in the term of their licence.

**Regulation of LNG**

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

Market activities relating to LNG, which are its import, storage, wholesale and export, are also subject to the Natural Gas Market Law and EMRA's licensing requirement. Entities holding a spot LNG import licence can make imports with this single licence and are not required to obtain a separate licence for each spot LNG import transaction. There are three operational LNG terminals for the storage and regasification of gas imported from Algeria and Nigeria and bought from the spot market – two onshore and one offshore. One onshore facility



is operated by BOTAS and the other onshore facility and the offshore facility are operated by private companies.

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

The regulatory framework for building and operating an LNG terminal is overseen by EMRA, which is an independent body. LNG terminals can be built and operated by private persons holding a storage licence obtained from EMRA.

In addition to the licence from EMRA, operators are required to obtain the permits and authorisations required by environmental legislation. The key permits are the environmental permit to be obtained under the Environmental Permits and Licence Regulation and the environmental impact assessment affirmative opinion under the Environmental Impact Assessment Regulation. The authorised governmental body in respect of both is the Ministry of Environment and Urban Planning.

As all decisions relating to such licence and permit applications are adopted by administrative bodies, they constitute administrative actions that may be challenged before administrative courts in accordance with Turkish legislation on administrative procedure.

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

The natural gas market legislation does not provide for a specific price regulation for import, export or wholesale of LNG. Storage of LNG, on the other hand, is subject to the storage tariffs regulated by EMRA.

Additionally, the Licensing Regulation provides for a mandatory access requirement to storage facilities. Applications for access may be rejected only on the basis of specific reasons set out in the provision (ie, lack of sufficient capacity), which must be brought to the attention of EMRA in order to be raised as a justified rejection of access. Further, access to the system may not be rejected if the user seeking connection to the system accepts covering necessary investment expenses.

### **Mergers and competition**

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

With respect to competition, operations in the natural gas market are overseen by EMRA, within the scope of the Natural Gas Market Law, and the Competition Authority, within the scope of Law No. 4054 on the Protection of Competition, published in the Official Gazette No. 22140, dated 13 December 1994.

The measures provided by the Natural Gas Market Law are of a more preventive nature than those provided to the Competition Authority. As explained above, the Natural Gas Market Law envisages certain market restrictions for wholesale and import of natural gas. Distribution licence holders are not allowed to purchase more than 50 per cent of the natural gas they distribute from a single supplier. Finally, pursuant to the Natural Gas Market Law, a natural gas market licence-holder company can participate in a maximum of one company that does not operate in the natural gas market, provided that it does not:

- directly or indirectly hold more than 50 per cent of the share capital, commercial assets or voting rights;
- have the right to appoint more than 50 per cent of the board of directors' members or auditors; or
- have the right to manage the business of such company.

Except for distribution companies, natural gas market licence-holder companies cannot participate in other companies operating in the natural gas market. Distribution companies, however, may participate in one company that operates in the natural gas market, upon obtaining EMRA's prior approval.

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

The supervision of EMRA under the Natural Gas Market Law has a preventive nature; in contrast, the Competition Authority has an ex post investigation authority in respect of anticompetitive practices. There are no substantive standards either in natural gas or in antitrust

legislation for determining whether a conduct is anticompetitive or manipulative; the assessment is made on a case-by-case basis. Competition violations set forth under the competition legislation are *numerus clausus* and can be grouped under the categories of:

- agreements, concerted practices and decisions limiting competition;
- failure to duly notify mergers or acquisitions that are subject to the approval of the Competition Board; and
- abuse of dominant position.

The Competition Authority prepared and announced a sector analysis in respect of the natural gas market in which it emphasised the importance of competition in the liberalisation of the natural gas market and the Competition Authority's intention to closely monitor such process. Finally, a protocol was entered into between EMRA and the Competition Authority on 28 January 2015 for cooperation between the two authorities in the monitoring of anticompetitive or manipulative conduct in the electricity, natural gas, petroleum and LPG markets.

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

The Competition Authority performs its duty to preclude or remedy anticompetitive or manipulative practices by way of supervising the markets in respect of any anticompetitive or manipulative practices and imposing sanctions in the case of violations as well as reviewing and approving, entirely or subject to certain restrictions, beforehand, any mergers or acquisitions between undertakings with turnover volumes exceeding the thresholds set forth by its board.

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

Yes, mergers and acquisitions are regulated by article 7 of the Law on the Protection of Competition (Law No. 4054, dated 12 December 1994), which authorises the Competition Board to issue the requirements of notification and assessment of mergers and acquisitions and to review the individual applications in respect of transactions between undertakings with turnover volumes exceeding the turnover thresholds set by its board. Pursuant to Communiqué No. 2010/4 on Mergers and Acquisitions Subject to the Approval of the Turkish Competition Board, there are two thresholds according to which a merger and acquisition transaction becomes subject to the Turkish Competition Board's review and approval. In order for a merger or acquisition transaction to become legally effective, the Board's approval is required if either:

- the total turnover of all parties in Turkey exceeds 100 million Turkish liras and the individual turnovers of at least two parties in Turkey separately exceed 30 million Turkish liras; or
- in acquisition transactions, assets or activities subject to the transaction, and in merger transactions, the individual turnover of at least one of the transaction parties in Turkey exceeds 30 million Turkish liras and the global turnover of at least one of the other transaction parties exceeds 500 million Turkish liras.

The merger of two undertakings, acquisitions or control of property and shareholdings or any other means such as joint venture agreements that provide controlling authority in the management of an undertaking are considered to be a merger or an acquisition within the meaning of Turkish competition legislation subject to the condition that control is transferred from one independent undertaking to another.

The Competition Authority must finalise its review of the merger and acquisition notifications within 30 days of the date of submission. In the event of additional questions or document requests by the Competition Authority, the 30-day review period restarts from the date of submission of the requested information and documents by the applicant to the Competition Authority.

Under the natural gas market legislation, the transfer of a licence holder's shares is also subject to EMRA's prior approval for:

- direct or indirect acquisition of 10 per cent or more (5 per cent or more in public companies) of the share capital of a licence holder by a real person or legal entity; and
- resulting in a shareholder's share percentage exceeding or falling below 10 per cent of the relevant company's share capital.

### Update and trends

#### Organised natural gas wholesale market

As one of the most significant developments of the previous year, on 31 March 2017, EMRA announced the Organised Natural Gas Wholesale Market Regulation, introducing a regulated spot market for natural gas trading that will be operated by EPIAŞ. See question 21.

Currently, the market players trade pipeline gas by way of long-term supply agreements or spot trading under BOTAŞ's Network Code (ie, not through a formal market but rather an over-the-counter market where the parties conclude agreements by way of emails, or even by telephone). Similar to the existing electricity market structure, the Regulation aims to create an organised natural gas spot market, which will complement the bilateral agreements between market participants. Accordingly, market participants will be able to sell and purchase natural gas, and remedy their imbalances by way of day-ahead, intra-day and post-day trades.

#### BOTAŞ's price subsidy

Although all importers (including BOTAŞ) procures gas in US dollars, BOTAŞ sells such gas in Turkish lira with subsidised pricing, which is then followed by other wholesalers as a reference price. This has been a systemic problem in the market and, in 2017, this problem became apparent more than ever, because of the Turkish lira's very volatile position against the US dollar and BOTAŞ not reflecting the rise in the

cost of purchase of natural gas in their pricing. As a result, private suppliers are threatened with going out of business and incurring losses.

Recently, BOTAŞ introduced midway solutions to solve this problem and gradually increased its gas sale prices to gas-fired power plant facilities and introduced penalties for exceeding the reservations made for 2018, thereby directing a certain portion of its customers to private suppliers and distributing the burden on the market players at different levels. The final consensus is yet to be reached and negotiations for possible alternative remedies are underway.

#### FSRU developments

FSRUs play an important role in maintaining natural gas supply security in Turkey. Especially at peak consumption intervals, the main purpose of the FSRU is to protect the system pressure profile and provide natural gas supply security by sending out the maximum amount of gas from the terminal to the system. When needed, it is possible to supply natural gas from different sources without being dependent on pipelines, providing additional supply to the national grid in accordance with the storage and regasification capacities. At present, Turkey has a single FSRU terminal owned and operated by a private company. However, BOTAŞ has been granted a 30-year storage licence for the establishment of a second FSRU, which is expected to become operational in the first half of 2018 in Dörtöyl, Hatay.

In respect of storage licence holders, on the other hand, share transfers for any reason pertaining to 10 per cent or more (5 per cent or more in public companies) of the share capital is subject to EMRA's prior approval regardless of such share transfer resulting in a shareholder's share percentage exceeding or falling below 10 per cent (5 per cent or more in public companies) of the relevant company's share capital.

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

The price applied by a distributor company to its customers must consist of the purchase price, the cost of using the transmission network, the applicable taxes and other similar financial obligations. Wholesale companies pass on any costs they incur for the transmission and transportation of natural gas to each customer via the respective distributor companies. Pursuant to the principles and procedures set forth in a board decision of EMRA, No. 3577, dated 22 December 2011, wholesale licence holders who supply to distribution companies must notify the respective distribution companies at the beginning of each month of the final wholesale price including any transmission and transportation fees, storage costs (if any) and costs arising from any commitments such as minimum and maximum purchase orders.

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

See question 26.

### International

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

There are no particular requirements for or limitations on foreign companies acquiring interests in any part of the Turkish natural gas sector; however, the licences required for operations in the natural gas market can only be obtained by Turkish limited liability companies. Thus, a foreign entity would need to establish a Turkish subsidiary for the contemplated operation and apply for the necessary licences through such subsidiary. Additionally, as share transfers exceeding certain thresholds are also subject to EMRA's prior approval, EMRA can monitor the foreign shareholding in licence-holder companies.

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

Owing to the strategic importance of natural gas-related activities, it could be stated that treaties and international agreements do not have

a direct impact on Turkey's regulatory policy. However, Turkey is party to several international treaties, which have the same effect as domestic laws, pursuant to article 90 of the Turkish Constitution. Also, EMRA has entered into several cooperation arrangements with international institutions and organisations. On the other hand, transit natural gas pipeline projects are realised under international treaties and host government agreements.

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

The import and export of natural gas can be conducted with specific licences issued by EMRA. Under the Natural Gas Market Law, import is defined as the supply of natural gas from abroad in LNG or gas form for the sale to wholesale companies, eligible consumers, export companies, distribution companies and CNG companies or for direct sales abroad. In other words, an import licence holder can sell the gas that it imported to:

- wholesale companies;
- export companies;
- distribution companies;
- CNG companies; or
- eligible consumers.

Import licence holders can also conduct wholesale activities without obtaining a wholesale licence. For conducting direct sales abroad, on the other hand, an import licence holder must obtain a separate export licence from EMRA.

Export is defined as the sale of the natural gas outside Turkey. For this purpose, export companies can purchase natural gas from production companies, import companies or wholesale companies. Production companies and import companies may also engage in export activities by obtaining an export licence from EMRA.

Wholesale companies must obtain separate import or export licences in order to conduct import or export activities.

The only transit law in Turkey is Law No. 4586 concerning the Transit Passage of Petroleum via Pipelines, which was initially enacted for the Baku-Tbilisi-Ceyhan Petroleum Pipeline Project; however, this also applies as a general law applicable to the cross-border transit of petroleum and natural gas products.

### Transactions between affiliates

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

The law does not provide for any restriction on transactions between a natural gas utility and its affiliates. However, see question 26 regarding participation restrictions on natural gas market licence-holder companies.

As a further restriction on distribution companies that might have participated in a wholesale or import licence holder, the Natural Gas Market Law prohibits distribution licence holders from purchasing 50 per cent or more of the natural gas they distribute from a single supplier.

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

EMRA is the responsible authority in respect of the above-mentioned restrictions on natural gas market licence holders. In the case of violation of the relevant prohibitions, EMRA imposes an administrative fine (which is subject to change each year) on the relevant licence holder and orders remedying of the prohibited violation within 30 days of its notification. The amounts of the administrative fines applicable in 2017 vary from 643,368 to 1,102,918 Turkish liras.

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