

Electricity Regulation 2022

Contributing editor
John Dewar



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent

adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between August and September 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021

No photocopying without a CLA licence.

First published 2003

Twentieth edition

ISBN 978-1-83862-653-2

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Electricity Regulation 2022

Contributing editor**John Dewar****Milbank LLP**

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

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

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

Lexology 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.lexology.com/gtdt.

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

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, John Dewar of Milbank LLP, for his continued assistance with this volume.



London

September 2021

Reproduced with permission from Law Business Research Ltd

This article was first published in September 2021

For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview	3	Ireland	76
John Dewar Milbank LLP		Eoin Cassidy, Peter McLay and William Carmody Mason Hayes & Curran LLP	
Australia	8	Japan	86
Andrew Monotti, Simon Cooke and Joe McQuillen King & Wood Mallesons		Nagahide Sato, Sadayuki Matsudaira and Junya Ohashi Nishimura & Asahi	
Belgium	19	Panama	93
Arnaud Coibion, Lothar Van Driessche and Sari Corrijn Linklaters LLP		Erika Villarreal Zorita and José A Brenes Anzola Robles & Asociados	
Brazil	28	South Africa	102
Marcello Portes da Silveira Lobo and Pedro Vargas Pinheiro Neto Advogados		Jonathan Behr Werksmans Attorneys	
Ghana	38	Turkey	112
Kimathi Kuenyehia, Akua Serwaa Asomani-Adem, Kafui Kwabla Quashigah and Augustine Kwaku Yeboah Kimathi & Partners Corporate Attorneys		Değer Boden Akalın and Şekip Bertan Başkaya Boden Law	
India	52	United Kingdom	125
Neeraj Menon, Swathy S Pisharody and Kuhoo Mishra Trilegal		John Dewar and Seyda Duman Milbank LLP	
Indonesia	67	United States	133
Arfidea Dwi Saraswati, Tara Priscilla Ogilvie, Andi Manggoana Wira Tenri and Mochamad Fatih Satria Kasmaliputra AKSET Law		Daniel A Hagan, Hagai Zaifman and John N Forbush White & Case LLP	

Ireland

Eoin Cassidy, Peter McLay and William Carmody

Mason Hayes & Curran LLP

LEGAL FRAMEWORK

Policy and law

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

The Minister for the Environment, Climate and Communications is the Irish government minister responsible for exercising executive power concerning (among other things) the Irish electricity sector. Several other statutory bodies have policy related functions, including the Commission for Regulation of Utilities (CRU).

The Electricity Regulation Act 1999 (the 1999 Act) is the central piece of legislation governing the Irish electricity sector. The 1999 Act established the CRU and has been amended frequently since its passage to supplement the role, powers and duties of the CRU. The 1999 Act also provided for the issuance, by the CRU, of licences concerning the generation and supply of electricity. The administration by the CRU of this licensing function and the supervision by the CRU of licensed activities (which have been extended to include transmission and distribution ownership and operation, and the operation of electricity interconnectors) form the basis for the competition that exists in the Irish electricity sector.

Irish government policy in the electricity sector tends to reflect EU energy policy, and recent Irish legislation tends to be driven by the requirement that relevant EU legislation is transposed into national law. Thus, the 1999 Act was enacted to give effect in Ireland to Directive 96/92/EC, which was itself enacted as part of the first EU energy package. The second and third EU energy packages have subsequently been transposed into Irish law, along with three out of the four directives from the EU clean energy package.

A distinct local manifestation of Irish electricity policy was the commencement, on 1 November 2007, of trading in the Single Electricity Market (SEM), the wholesale electricity market through which most of the electricity generated and consumed on the island of Ireland (encompassing the Republic of Ireland, together with Northern Ireland) is required to be traded.

Following a redesign in 2018 (the Integrated Single Electricity Market (I-SEM) project), the SEM includes day ahead, intraday and balancing markets for energy, and a capacity remuneration mechanism, under which capacity support is allocated by auction. The development of the energy trading arrangements within I-SEM was driven by the requirements of the network codes published under Regulation (EC) No. 714/2009 (which was also enacted as part of the third EU energy package).

The regulation and oversight of the SEM is complicated by the fact that its territory includes two separate legal jurisdictions. To ensure consistency of SEM regulation as between these jurisdictions, the electricity regulator in each jurisdiction retains exclusive regulatory authority in its particular jurisdiction (the CRU in the Republic of Ireland

and the Northern Ireland Authority for Utility Regulation in Northern Ireland) but is required under local statute to discharge its SEM-related functions through a committee known as the SEM Committee, which has an identical constitution and membership in each jurisdiction. In Ireland, the enduring arrangements underpinning these regulatory arrangements were given a statutory footing by way of amendments made to the 1999 Act in 2006 and 2007.

The latest comprehensive statement of the Irish government's energy policy is the Climate Action Plan, which was published in June 2019. Notably, concerning electricity, the Climate Action Plan included ambitions to:

- deliver an early and complete phase-out of coal- and peat-fired electricity generation;
- increase electricity generated from renewable sources to 70 per cent by 2030, indicatively comprised of at least 3.5 gigawatts of offshore renewable energy, up to 1.5 gigawatts of grid-scale solar energy and up to 8.2 gigawatts total of increased onshore wind capacity; and
- meet 15 per cent of electricity demand by renewable sources contracted under corporate power purchase agreements.

In June 2020, a new government was formed, and the Programme for Government reaffirmed the commitment to deliver at least 70 per cent renewable electricity by 2030. It lists several measures to achieve this, including but not limited to:

- holding the first Renewable Electricity Support System auction by the end of 2020, with further auctions being held on an annual basis thereafter;
- producing a 'whole of government' plan setting out how to deliver the 70 per cent target;
- building the Celtic Interconnector to connect Ireland's electricity grid to that of France; and
- continuing the procurement of ancillary system services under EirGrid's Delivering a Secure, Sustainable Electricity System (DS3) programme.

Organisation of the market

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

Before the liberalisation of the Irish electricity sector through the passage of the 1999 Act and the introduction of the generator licensing regime, substantially all electricity generation in Ireland was carried out by the Electricity Supply Board (ESB), a statutory body that is majority owned by the Irish government, and in which its employees have a minority shareholding. However, it is now possible for any person to carry out the generation of electricity so long as they first obtain from the CRU a licence to generate electricity and authorisation to construct

the relevant generating station. A generator with a nameplate capacity above 10 megawatts is required to participate as a generator in the SEM, while a generator with a nameplate capacity of 10 megawatts or less may elect to, but is not required to, participate in the SEM.

The Irish electricity system is small (with an all-time peak system demand of approximately 5,000 megawatts), at least when compared to the scale of, for example, modern combined cycle gas turbine generators. The latest market figures published by the CRU (Electricity and Gas Retail Markets Report Q2 2019) states that at the end of the second quarter, the ESB was the largest generator of electricity in the SEM, with 30 per cent of total generation, followed by SSE Airtricity with 14 per cent and the Energia Group with 12 per cent.

While the market, therefore, remains relatively concentrated, a noteworthy trend in recent years has been the rapid increase in the amount of onshore wind generation connected to the Irish electricity system. There are now approximately 4,500 megawatts connected (up from approximately 500 megawatts as at the end of 2005), spread across a numerous and diverse set of owners – although the recent consolidation of development activities into a smaller subset of actors is also evident.

Transmission

Ownership and, separately, operation of the Irish electricity transmission system requires the holding of an appropriate licence issued by the CRU under the 1999 Act. The 1999 Act provides that a licence to own the transmission system may be issued only to the ESB and that a licence to operate the transmission system may be issued only to EirGrid plc (wholly owned by the Irish government). The ESB and EirGrid plc regulate their relationship, concerning the transmission system, by way of a contractual infrastructure agreement.

On 22 May 2013, EirGrid plc was certified by the CRU as the electricity transmission system operator (TSO) for Ireland for the purposes of Directive 2009/72/EC and Regulation (EC) No. 714/2009. This certification amounted to a finding that the arrangements for the ownership and operation of the Irish electricity transmission system satisfied the requirements of Directive 2009/72/EC concerning the independence of transmission system operation from electricity generation and supply.

Distribution

Ownership and, separately, operation of the Irish electricity distribution system requires the holding of an appropriate licence issued by the CRU under the 1999 Act. The ESB is the licensed owner of the distribution system, and ESB Networks DAC, a wholly owned subsidiary of ESB, is the licensed distribution system operator.

Retail supply of electricity

Before the liberalisation of the Irish electricity sector through the passage of the 1999 Act and the introduction of the supplier licensing regime, the retail supply of electricity in Ireland was carried out by ESB. From February 2005, all Irish electricity customers were eligible to select an alternative electricity supplier, and initially, the ESB's supply business was restricted in its ability to determine its retail prices and thereby compete to win back customers. Following the achievement of what the CRU determined to be an adequate level of consumer switching, these pricing restrictions were removed for business customers in October 2010 and for domestic customers in April 2011. As a condition of this deregulation, the supply business of ESB – which, at the first quarter of 2017, still enjoyed a majority share (51.16 per cent of the domestic electricity market, measured by consumption) – was rebranded as Electric Ireland.

Any person may now carry out the retail supply of electricity in Ireland so long as they first obtain a licence from the CRU to supply electricity and accede to participation as a supplier in the SEM, which requires the provision to the market of appropriate collateral.

Capacity remuneration

From SEM go-live (November 2007) until I-SEM go-live (October 2018), participation as a generator in the SEM carried with it an entitlement to receive capacity payments in return for plant availability. The SEM regulators determined, for each calendar year, an Annual Capacity Payment Sum, which was distributed to SEM-participating generators throughout the year on a weighted basis reflecting the relative scarcity, and corresponding value, of generation capacity at various times.

Since I-SEM go-live, for a generator to receive remuneration for capacity, it must successfully bid in an auction and be awarded a contract for difference in regulated form. Broadly, the terms of the contract provide for the payment to the generator of a capacity fee (based on auction bids) but also require the generator to pay back any revenues earned in the energy market when prices exceed a regulated strike price. Auctions and contracts run on various timetables. T-1 auctions take place on an annual basis and allocate the regulated contracts in the year preceding the year in which it is to be effective. T-4 auctions also take place on an annual basis, but allocate regulated contracts approximately four years before they are to take effect – this lead time is intended to enable the construction of new generating capacity.

The last T-1 auction was held in November 2019, in respect of the capacity year 2020–2021. The auction clearing price was €46,150 per megawatt. An additional T-2 auction was held in December 2019, in respect of the capacity year 2021–2022. The auction clearing price was €45,950 per megawatt. The next T-1 auction will be held in October 2021 in respect of the capacity year 2022–2023. The latest T-4 auction was held in March 2021 in respect of the capacity year 2024–2025. The auction clearing price was €47,820 per megawatt.

System services

In its capacity as the operator of the Irish electricity transmission system, and intending to increase the percentage of instantaneous demand that may be securely served by intermittent generators, EirGrid plc is operating a programme of operational improvements known as DS3. The DS3 programme includes the procurement of technical system services, such as operating reserve, frequency response and ramping capabilities, from market participants that are capable of providing them.

The procurement of these system services is currently divided into Volume Capped and Volume Uncapped processes under a general regulated approach to procurement. The Volume Capped process has involved the awarding, during 2019, of fixed-term contracts for a maximum period of six years and remuneration at rates based on the results of competitive auctions. It is anticipated that battery energy storage will secure the majority of these contracts. By contrast, the remuneration for Volume Uncapped services is based on regulated tariffs, which may be altered during the duration of the contract. Procurement of the Volume Uncapped services proceeds under a gate cycle, whereby tenderers have six-monthly opportunities to enter the process.

On 8 July 2020, the SEM Committee published a scoping paper asking for stakeholder views on the merits of moving to a more market-based and competitive procurement approach. The consultation process closed on 2 October 2020. The SEM Committee published a follow-up report on 30 March 2021 providing an update to stakeholders following a review of the responses received. The SEM Committee has decided that this scoping phase will be followed by a high-level design phase and then finally an implementation phase.

The report sets out several decisions made by the SEM Committee concerning the System Services Future Arrangements Scoping Paper beyond the current regulated arrangements, which had been set to expire on 30 April 2023. The SEM Committee has decided to grant a 12-month extension to the current regulated arrangements, meaning the relevant contracts will now end on 30 April 2024.

The SEM Committee proposes to hold further engagement sessions with stakeholders and to publish a further decision on the high-level design of the Future Arrangements by the end of 2021. The implementation phase will then commence, with further consultations on additional considerations to be held during that phase.

REGULATION OF ELECTRICITY UTILITIES – POWER GENERATION

Authorisation to construct and operate generation facilities

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

The electricity regulatory authorisation required to construct a generation facility is an 'authorisation to construct or reconstruct a generating station', issued by the Commission for Regulation of Utilities (CRU) under section 16 of the Electricity Regulation Act 1999 (the 1999 Act). The criteria to which the CRU may have regard in determining an application for such authorisation are prescribed under the Electricity Regulation Act 1999 (Criteria for Determination of Authorisations) Order 1999 (SI No. 309 of 1999). Other authorisations such as planning permission are also required.

The electricity regulatory authorisation required to operate a generation facility is a licence to generate electricity issued by the CRU under section 14(1)(a) of the 1999 Act. Other operational permits such as an integrated pollution prevention and control licence may also be required.

Authorisations to construct and generation licences are typically issued by the CRU in a standard form, each of which is personalised only to the extent required to identify the relevant licence-holder and project. The 1999 Act includes a procedure, involving public consultation, under which the CRU may modify an issued authorisation or licence. The CRU modified the form of standard generation licence in 2007 in preparation for the commencement of trading in the Single Electricity Market (SEM), and then again in 2017 in preparation for the Integrated Single Electricity Market (I-SEM) go-live, although the CRU suspended the latter set of modifications following a challenge from a licence-holder.

Streamlined procedures also exist to facilitate the issuance of authorisations to construct and generation licences in respect of generators that are to have an installed capacity of 10 megawatts or less. Of these, generators that are to have an installed capacity of 1 megawatt or less automatically stand duly authorised and duly licensed, without the need for a formal application to be made to the CRU.

Grid connection policies

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

Section 34 of the 1999 Act confers upon the CRU regulatory powers in respect of the connection of electricity generators to the transmission grid. Section 34 provides that where an application is made to the transmission system operator (TSO) for connection to or use of the transmission system, the TSO must (except where certain circumstances apply) offer to enter into an agreement for such connection or use, under directions given to the TSO by the CRU from time to time.

The CRU has used this power of direction to stipulate the required standard form of transmission connection and use of system agreements, as well as the approach required to be taken by the TSO to applications for connection. The most significant uses of this power have been:

- the approval of the basis upon which the system operators levy charges for the connection of parties to the electricity transmission and distribution systems. Each connecting party is generally

responsible for meeting the cost of the construction of local connection assets, as designed by the system operators on a least-cost technically acceptable basis. Certain connection assets may be procured contestably, whereby the connecting party, rather than the system operators, is responsible for the construction of the relevant assets; and

- the establishment of the group processing approach (GPA) to connection applications, which was introduced by the CRU in 2004 and which limited the availability of connection to renewable generation projects that fell within the criteria specific for membership of the Gate 1 (370 megawatts), Gate 2 (1,300 megawatts) and Gate 3 (4,000 megawatts) capacity tranches. A separate 2,000 megawatts tranche of capacity was subsequently added to the Gate 3 programme for conventional (non-renewable) generation.

In March 2018, the CRU established a multiphase enduring connection policy (ECP) to replace the GPA. The second cycle of capacity allocation, ECP-2, was announced on 10 June 2020 and will consist of one batch per year in September 2020, September 2021 and September 2022. The size of these batches will be determined by the number of applications rather than aggregate megawatts. There is a target of 115 connection offers for each batch period consisting of:

- 85 projects for the generation, storage and other system services technology projects with a maximum export capacity exceeding 500 kilowatts, prioritised by largest renewable energy generation (for the first 25) and thereafter by date of planning permission grant;
- 15 non-batch projects; and
- 15 community led projects.

Offshore wind grid connection is dealt with separately from the ECP process. To achieve the 5 gigawatts offshore wind energy target by 2030, as set out in the Programme for Government, the Irish government is seeking to establish a policy framework for the delivery model for offshore grid connection in alignment with the National Marine Planning Framework. Accordingly, the Department of Communications, Climate Action and the Environment (as it then was) published a consultation paper in June 2020 on a Grid Development Policy for Offshore Wind in Ireland. The consultation paper outlined four different options, ranging from a developer-led model (which is similar to the model used in the United Kingdom) to a plan-led model (which is similar to the model used in the Netherlands). The Department of the Environment, Climate and Communications plans to select what it regards as the most appropriate offshore grid model for Ireland. The choice of grid model will be considered against the backdrop of the National Marine Planning Framework (NMPF) and the consent regimes set out in the Maritime Area Planning Bill (the MAP Bill).

Alternative energy sources

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

Under the 1999 Act, the Minister and the CRU are required, when carrying out their duties, to have regard to the need to promote the use of 'renewable, sustainable or alternative forms of energy'. This category is defined as the production of electricity using, as the primary source of energy, any of wind, hydro, biomass, waste (including waste heat), biofuel, geothermal, fuel cells, tidal, solar and wave (or a combination of such sources).

Public Service Obligation support schemes

Under section 39 of the 1999 Act, the Minister is required to direct the CRU to impose 'public service obligations' upon electricity

licence-holders, which may include such arrangements as are necessary to ensure the availability of electricity generated using 'renewable, sustainable or alternative forms of energy' or that operate as combined heat and power plants.

This PSO mechanism was used to establish three renewable energy feed-in tariff (REFIT) support schemes. Each of these schemes operated by paying, to the off-taker of a supported power purchase agreement with a renewable generator, a feed-in tariff reflecting the difference between the wholesale electricity price and the technology specific price guaranteed to the generator under the REFIT scheme. The last of the schemes, REFIT 3, closed to new applicants on 31 December 2015. REFIT support for an eligible project will expire after 15 years or on 31 December 2032, whichever occurs first.

In July 2018, following an earlier consultation exercise, the Department of Communications, Climate Action and Environment (as it then was) announced its intention to establish a new Renewable Electricity Support Scheme (RESS) and published an accompanying high-level design paper. The RESS is intended to operate by allocating long-term two-way contracts for difference that will support the payment of fixed per megawatt-hour prices (on a pay-as-bid basis) to projects that are successful in RESS auctions. The auction for RESS-1 was held in July 2020, and the announcement of the final results and notices of awards happened in early and late September 2020 respectively. The auction awarded 1,275 megawatts of solar and onshore wind capacity – comprising 796.3 megawatts for solar and 479.2 megawatts of onshore wind capacity.

The Department of the Environment, Climate and Communications published the initial draft RESS 2 Terms and Conditions on 22 June 2021 and launched a public consultation process concerning the scheme. This publication was accompanied by the initial RESS 2 auction timetable, under which the projected qualification window will run from 29 March 2022 to 29 April 2022, with an intention to run the RESS 2 auction on 29 July 2022. The final auction results date and the notice of award date are both scheduled for late September 2022.

Planning

The Planning and Development Act 2000 allows an enhanced approval procedure for planning applications for wind farms with more than 25 turbines or output of greater than 50 megawatts, where the Planning Appeals Board considers that the project is of strategic, economic or social importance, contributes substantially to fulfilling the National Spatial Strategy or regional planning guidelines or would have a significant effect on the area of more than one planning authority. In 2006, the Department of Environment, Heritage and Local Government (as it then was) published Wind Energy Development Guidelines, which set the national policy context to be applied by planning authorities in the determination of planning applications for wind farms.

In December 2019, new draft Wind Energy Development Guidelines, which are intended to replace the 2006 Guidelines, were published by the Minister for Housing, Planning, Community and Local Government. The draft revisions were open to public consultation until February 2020. The key aspects of the draft approach are the following.

- New noise restriction limits of a relative rated noise limit of 5 decibels (dB(A)) above existing background noise within the range of 35 to 43 dB(A) for both day and night, with 43 dB(A) being the maximum noise limit permitted. The Guidelines propose a potential penalty of up to 11 dB(A) for specific noise with tonal or amplitude modulation characteristics, with the result that wind farm developments with these specific noise characteristics would not be able to operate without mitigation measures. The Guidelines also specify a threshold for low-frequency noise, beyond which a turbine will be required to be shut down.

- For visual amenity purposes, each turbine should be set back from the curtilage of a residential property by a distance of at least four times its tip height, subject to a mandatory minimum setback of 500 metres. Where the owner or occupier of such a residential property agrees to a lower setback distance, an exception can be permitted, but the requirement to comply with the noise requirements outlined above will continue to apply to such residential property.
- The adoption of technology that will shut off each wind turbine automatically to eliminate any shadow flicker.
- Developers of wind energy developments must be required to engage in active public consultation with the local community in advance of the planning process, and there will be a requirement to submit a community report as part of that planning process outlining how the concerns of the community concerning the development have been accommodated in the final proposed development. Further, the community report must detail how the local community have been offered an opportunity to obtain an enduring economic or social benefit from the proposed development.
- No works in respect of the primary wind energy development, which will require an environmental impact assessment to be conducted, will be permitted unless the grid connection element of the project has also obtained a grant of planning permission.

The June 2020 Programme for Government indicates that the finalisation and publication of the Guidelines is a priority for the new government. That programme also proposes the establishment of a dedicated Environmental and Planning Law Court, along the lines of the dedicated Commercial Court that operates in Ireland. It is considered that such a dedicated court could assist in reducing the often lengthy delays occasioned by litigation of planning decisions in the Irish courts. The programme for government also flags the potential for some reform of the judicial review process, although it stops short of making any detailed proposal in that regard.

Concerning Ireland's offshore marine area, the Irish government published the National Marine Planning Framework (the NMPF) on 30 June 2021, in tandem with the Maritime Area Planning Bill (the MAP Bill).

The NMPF is the overarching framework for decisions and will now be a key consideration for decision-makers on marine authorisations which sets out economic, social and environmental aspects to support sustainable development and growth in the maritime sector.

The MAP Bill is the new legislative framework for the development consent and management of Ireland's offshore marine area. All applications for activity or development in Ireland's maritime area, including those made within the new development management system under the MAP Bill, will be considered in terms of their compliance with the objectives of the NMPF.

The introduction of both the NMPF and the MAP Bill reflects the government's commitment to modernise the state's approach to marine management – the MAP Bill has been described as the 'the biggest reform of marine governance in a century'. Power generation based on alternative energy sources and carbon reduction appears to be a central theme in both documents. It is clear that the government intends to facilitate offshore renewable energy projects while enforcing sustainable practices across all marine area projects.

Priority dispatch

Ireland was previously required, under Directive 2009/28/EC (Renewable Energy), to ensure that transmission and distribution system operators 'guarantee the transmission and distribution of electricity produced from renewable energy sources'. This obligation has been transposed into Irish law as a duty upon the TSO and distribution system operator to, when dispatching generating units, 'give priority to generating units using energy from renewable sources in so far as

the secure operation of the electricity system permits', and was also reflected in:

- the dispatch obligations imposed upon the TSO in its TSO licence and the Grid Code;
- rules imposed upon the TSO by the CRU for the dispatch of plant in 'tie-break scenarios'; and
- the ability of renewable generators to register as 'price taking generation' in the SEM (thereby providing preferential access to the SEM market schedule).

However, under the EU clean energy package, priority dispatch was removed for new generators that have contracts concluded on or after 4 July 2019, except for limited exemptions. In November 2020 the SEM Committee issued a decision on the precise application of these rules in Ireland, and the precise boundary between the set of priority dispatch generators and the set of newer, non-priority dispatch generators.

Climate change

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

In June 2019, the Irish government published its Climate Action Plan, which includes the stated government intention to:

- deliver an 'early and complete' phase-out of coal- and peat-fired electricity generation; and
- increase electricity generated from renewable sources to 70 per cent by 2030, indicatively comprised of at least 3.5 gigawatts of offshore renewable energy, up to 1.5 gigawatts of grid-scale solar energy and up to 8.2 gigawatts total of increased onshore wind capacity.

The RESS is anticipated to be the key policy lever by which new renewable generation capacity is to be delivered towards this target. RESS support will be priced according to the results of auctions, on a pay-as-bid basis, which makes its cost difficult to predict ahead of time.

The Irish government is also seeking to reduce the amount of power that is consumed, through the implementation of the National Energy Efficiency Action Plan that Ireland maintains under Directive 2012/27/EU (Energy Efficiency). The 2020 energy efficiency target equates to a 20 per cent reduction in final overall energy demand based on the average energy demand during the period 2001 to 2005, with the public sector expected to play an exemplar role by working towards a 33 per cent reduction target – although it should be noted that these targets apply to overall energy demand and not just the electricity demand.

Storage

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

The Irish electricity regulatory framework does not currently recognise electricity storage as a licensable activity in its own right. Absent this recognition, the business of an entity engaged in the storage of electricity falls to be regulated based on the separate licensable activities that this business entails; in particular, the supply and generation of electricity. Specific treatment of batteries and pumped storage units was, however, introduced into the wholesale electricity market rules as part of I-SEM go-live. A recent consultation of the CRU has noted that storage providers pay both demand-related network charges and general-related network charges (GTUOS). Following a review published in September 2020, the CRU decided that these arrangements may not accurately reflect the costs imposed on the network by

storage providers. The CRU has instructed EirGrid to cease charging GTUOS to commercial storage providers as an interim approach to network charges for storage pending a full review of the network tariff structure in 2021.

Government policy

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

It is noted in the 2015 energy white paper that nuclear power generation in Ireland is currently prohibited by legislation. This may be a reference to section 18(6) of the 1999 Act, which prohibits the Minister from providing for nuclear fission in any order by which the Minister directs the CRU as to how it determines whether or not to grant an authorisation to construct a generation station. An order of this type was made in 1999 but does not refer explicitly to nuclear fission. A more effective prohibition is set out in section 37K of the Planning and Development Act 2000, which provides that nothing in that Act shall be construed as enabling the authorisation of development that consists of an installation for the generation of electricity by nuclear fission.

REGULATION OF ELECTRICITY UTILITIES - TRANSMISSION

Authorisations to construct and operate transmission networks

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

Under the European Communities (Internal Market in Electricity) Regulations 2000 to 2009, functions and duties concerning the Irish electricity transmission system are borne by each of EirGrid plc, as transmission system operator (TSO), and the Electricity Supply Board (ESB), as the owner (transmission asset owner (TAO)). Each bears a degree of responsibility for the construction and operation of the transmission system. Accordingly, the electricity regulatory authorisations required to construct and operate the Irish electricity transmission network are both:

- the licence to discharge the functions of the transmission system operator, issued by the Commission for Regulation of Utilities (CRU) under section 14(1)(e) of the Electricity Regulation Act 1999 (the 1999 Act); and
- the licence to discharge the functions of the transmission system owner, issued by the CRU under section 14(1)(f) of the 1999 Act.

The 1999 Act provides that a licence to own the transmission system may be issued only to the ESB and that a licence to operate the transmission system may be issued only to EirGrid plc. However, under limited circumstances, the CRU may also permit another person to construct a 'direct line'.

Eligibility to obtain transmission services

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

Section 34 of the 1999 Act imposes upon the TSO a duty to offer to enter into an agreement for connection to or use of the Irish electricity transmission system, where an application for such connection or use is made by any person. However, in considering such an application or entering into such an agreement, the TSO is obliged to comply with directions given by the CRU. The CRU has made extensive use of its powers to issue these directions, with the result that connection policy is one of the most extensively regulated areas of the Irish electricity sector.

As a starting point, section 34 provides that a connecting party should be the holder of an electricity licence or authorisation issued

under the 1999 Act, or should be an 'eligible customer'. However, the requirements that must be met to apply for, obtain and maintain access to the electricity transmission system are set out across several sources, including the Grid Code, CRU decision papers, electricity licences and the forms of connection and use of the system agreement that have been approved by the CRU.

The TSO is required to prepare and maintain a Grid Code, governing the technical aspects relating to connection to and operation of the Irish electricity transmission system, and with which each connected party is obliged to comply. To facilitate the integrated operation of the Single Electricity Market, certain sections of the Grid Code – relating primarily to scheduling and dispatch – are governed jointly by the TSO and SONI Limited, the operator of the Northern Irish transmission system.

Government transmission policy

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

Under the 1999 Act, the Minister and the CRU are required, when carrying out their duties, to have regard to the need to secure that 'all reasonable demands by final customers of electricity for electricity are satisfied'. The TSO is obliged, both by legislation and by the terms of its TSO licence, to develop, if necessary, the transmission system to ensure that all reasonable demands for electricity are met and to plan the long-term ability of the transmission system to meet reasonable demands for the transmission of electricity. The TAO receives a regulated rate of return on transmission assets, which suggests that expansion is not likely to occur without the approval of the CRU.

Rates and terms for transmission services

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

Under the 1999 Act the TSO is required to prepare, from time to time, a statement of the basis upon which charges for providing transmission services (namely, connection to and use of the electricity transmission system) are imposed, which statement must then be approved by the CRU. The CRU may also give directions to the TSO concerning the charging basis that must be adopted.

A charge for connection to or use of the transmission system is required to be calculated to enable the TSO to recover an 'appropriate proportion' of the costs directly or indirectly incurred in carrying out any necessary works, and a 'reasonable rate of return' on the capital represented by such costs. The CRU determines what constitutes such an 'appropriate proportion' and a 'reasonable rate of return'.

Under the CRU's current approach to charging policy, the CRU conducts a price review that sets the transmission revenue that can be collected from connected customers during each successive five-year period. The current price review period relates to the calendar years 2016 to 2020 (inclusive). Within each price review period, tariffs are set annually by the CRU on a basis that includes adjusting for over- or under-recovery of transmission revenues in previous tariff periods. In practice, and in recognition that approved transmission revenues will be shared between the parties, both the TSO and the TAO participate in the regulatory price review process.

In offering to enter into an agreement for connection to or use of the Irish electricity transmission system, the TSO is obliged to comply with directions given by the CRU. The CRU has used this power to approve the forms of agreement for connection to or use of the transmission system that is required to be offered by the TSO to new and existing customers. The TSO is not permitted to discriminate unfairly

between persons or classes of persons when providing for use of the transmission system or where offering terms for the carrying out of works for the purpose of connection to the transmission system.

Entities responsible for grid reliability

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

These responsibilities are shared between the TSO, the TAO and the CRU. The TSO is obliged, both by legislation and by the terms of its TSO licence, to operate and ensure the maintenance of and, if necessary, develop a safe, secure, reliable, economical and efficient electricity transmission system. The TAO is, in turn, obliged to maintain the transmission system and to provide to the TSO such information as the TSO requires to ensure the secure operation of the transmission system. The discharge of these responsibilities, among other things, is governed by the Infrastructure Agreement in place between EirGrid plc and the ESB.

The CRU is obliged by law to monitor the security of the supply of electricity, which includes the monitoring of the quality and level of maintenance of the transmission networks and taking such measures as it considers necessary to protect the security of supply. The CRU has a general power to monitor and enforce the compliance by licensed parties with the terms of their respective licences, which includes the supervision of the performance of the TSO and TAO obligations referred to above.

REGULATION OF ELECTRICITY UTILITIES – DISTRIBUTION

Authorisation to construct and operate distribution networks

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

Functions and duties concerning the Irish electricity distribution system are borne by each of the Electricity Supply Board (ESB) Networks DAC, as distribution system operator, and the ESB, as distribution system owner (DAO). Each bears a degree of responsibility for the construction and operation of the distribution system. Accordingly, the electricity regulatory authorisations required to construct and operate the Irish electricity distribution network are both:

- the licence to discharge the functions of the distribution system operator, issued by the Commission for Regulation of Utilities (CRU) under section 14(1)(g) of the Electricity Regulation Act 1999 (the 1999 Act); and
- the licence to discharge the functions of the distribution system owner, issued by the CRU under section 14(1)(k) of the 1999 Act.

The 1999 Act provides that a licence to own the distribution system may be issued only to the ESB and that a licence to operate the distribution system may be issued only to the ESB or a subsidiary of the ESB. However, under limited circumstances, the CRU may also permit another person to construct a 'direct line'.

Access to the distribution grid

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

Section 34 of the 1999 Act imposes on the distribution system operator (DSO) a duty to offer to enter into an agreement for connection to or use of the Irish electricity distribution system, where an application for such connection or use is made by any person. However, in considering such an application or entering into such an agreement, the DSO

is obliged to comply with directions given by the CRU. The CRU has made extensive use of its powers to issue these directions, with the result that connection policy is one of the most extensively regulated areas of the Irish electricity sector.

As a starting point, section 34 provides that a connecting party should be the holder of an electricity licence or authorisation issued under the 1999 Act, or should be an 'eligible customer'. However, the requirements that must be met to apply for, obtain and maintain access to the electricity distribution system are set out across several sources, including the Grid Code, the CRU decision papers, electricity licences and the forms of connection and use of system agreement that have been approved by the CRU.

ESB Networks DAC maintains a separate Distribution Code governing the technical aspects relating to connection to and the operation of the Irish electricity distribution system.

Government distribution network policy

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

Under the 1999 Act, the Minister and the CRU are required, when carrying out their duties, to have regard to the need to secure that 'all reasonable demands by final customers of electricity for electricity are satisfied'. The DSO is obliged, both by legislation and by the terms of its DSO licence, to develop, as necessary, the distribution system to ensure that all reasonable demands for electricity are met. The DAO receives a regulated rate of return on distribution assets, which suggests that expansion is not likely to occur without the approval of the CRU.

Rates and terms for distribution services

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

Under the 1999 Act, the DSO is required to prepare, from time to time, a statement of the basis upon which charges for the provision of distribution services (namely, connection to and use of the electricity distribution system) are imposed, which statement must then be approved by the CRU. The CRU may also give directions to the DSO concerning the charging basis that must be adopted.

A charge for connection to or use of the distribution system is required to be calculated to enable the DSO to recover an 'appropriate proportion' of the costs directly or indirectly incurred in carrying out any necessary works, and a 'reasonable rate of return' on the capital represented by these costs. The CRU determines what constitutes such an 'appropriate proportion' and a 'reasonable rate of return'.

Under the CRU's current approach to charging policy, the CRU conducts a price review that sets the distribution revenue that can be collected from connected customers during each successive five-year period. The current price review period relates to the calendar years 2021 to 2025 (inclusive). Within each price review period, tariffs are set annually by the CRU on a basis that includes adjusting for over- or under-recovery of distribution revenues in previous tariff periods. In practice, and in recognition that approved distribution revenues will be shared between the parties, both the DSO and the DAO participate in the regulatory price review process.

In offering to enter into an agreement for connection to or use of the Irish electricity distribution system, the DSO is obliged to comply with directions given by the CRU. The CRU has used this power to approve the forms of agreement for connection to or use of the distribution system that are required to be offered by the DSO to new and

existing customers. The DSO is not permitted to discriminate unfairly between persons or classes of persons when providing for use of the distribution system or where offering terms for the carrying out of works for the purpose of connection to the distribution system.

REGULATION OF ELECTRICITY UTILITIES - SALES OF POWER

Approval to sell power

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

The electricity regulatory authorisation required to sell power to customers, whether commercial or domestic, is a licence to supply electricity to eligible customers, issued by the Commission for Regulation of Utilities (CRU) under section 14(1)(b) of the Electricity Regulation Act 1999. While 'eligible customer' was originally defined by reference to a minimum annual consumption volume, this limit has now been removed and any customer is now an 'eligible customer'.

Power sales tariffs

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

The CRU does not currently limit or direct the retail prices that may be charged by Irish electricity suppliers.

However, the CRU has a general power to monitor and enforce the compliance by each licensed electricity supplier with the terms of its supply licence. Each supplier serving domestic customers is required to comply with several Codes of Practice published by the CRU, including billing, disconnection, marketing, complaints handling, prepayment meters and vulnerable customers.

Rates for wholesale of power

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

Following the Integrated Single Electricity Market (I-SEM) go-live, the prices payable for sales of wholesale electricity in the Single Electricity Market (SEM) are established by the interaction of bidding and regulated processes in three separate temporal markets:

- the day ahead market administered by SEM0px (a contractual joint venture between EirGrid plc and SONI Ltd);
- the intraday market, also administered by SEM0px; and
- the balancing market, which is administered by the sem-o contractual joint venture between EirGrid plc and SONI Ltd under which the SEM has been operated since its inception.

Participation by generators and off-takers in the day ahead and intraday markets is voluntary, while market participants are balance responsible and their participation in the balancing market is therefore compulsory. At I-SEM go-live, SEM0px was the only 'nominated electricity market operator' (as defined in EU legislation) operating day ahead and intraday electricity markets for Ireland and Northern Ireland although this role is, under law, open to competition.

To mitigate perceived market power, certain generators are also obliged to issue a suite of contracts for differences, known as 'directed contracts'. The terms of these contracts, including the strike prices against the day ahead market price, are set by the CRU and the Northern Ireland Authority for Utility Regulation. Entry into directed contracts is open to electricity suppliers.

Public service obligations

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

Each electricity supplier that supplies electricity to domestic or small business customers bears an obligation, set out in its supply licence, to offer to enter into a supply contract upon receiving any reasonable request from a potential customer. It is also required, if designated by the CRU, to act as a supplier of last resort.

REGULATORY AUTHORITIES

Policy setting

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

The Minister for the Environment, Climate and Communications has overall policy responsibility for the electricity sector. However, the Commission for Regulation of Utilities (CRU) is responsible for the day-to-day regulation of the sector. The CRU is required to discharge its Single Electricity Market (SEM)-related functions through a committee known as the SEM Committee, made up of three individuals appointed by the CRU, three individuals appointed by the Northern Ireland Authority for Utility Regulation, an independent member and a deputy independent member.

Scope of authority

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

The many functions and duties of the CRU are set out in section 9 of the Electricity Regulation Act 1999 (the 1999 Act) and, concerning electricity, include establishing arrangements for trading in electricity, monitoring retail market opening and customer switching, granting, enforcing and revoking electricity licences and acting as Ireland's national regulatory authority for the purposes of Directive 2009/72/EC (concerning common rules for the internal market in electricity).

The CRU has, since 2006, had the power to take all necessary steps to establish and facilitate the operation of the SEM. In June 2016 this power was extended to include the amendments to the SEM that were made by way of the Integrated Single Electricity Market (I-SEM) project.

Establishment of regulators

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

The CRU was established under the 1999 Act, stands as a statutory body and is funded by a levy imposed on energy undertakings and other regulated entities. The minister is responsible for the appointment of each member of the CRU and retains the power to give general policy directions to the CRU (as well as specific directions concerning certain other, specified matters). The minister is not, however, permitted to give general policy directions to the CRU concerning SEM matters.

Challenge and appeal of decisions

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

Decisions of the CRU on the granting of an electricity supply or generation licence under section 14 or an authorisation to construct a generating station under section 16 of the 1999 Act, and decisions of the CRU on modification of the terms of these licences or authorisations already

granted, can be appealed within 28 days of deciding by requesting that the minister establish an appeal panel. Such an appeal panel has all the powers and duties of the CRU that are necessary to determine the issue. The first such appeal panel was constituted in 2018, and in July 2018 it found in favour of two licence holders who had challenged the CRU's purported amendment of their licences as part of the I-SEM project and directed the CRU not to make the proposed modifications.

The 1999 Act also provides for application for judicial review, through Order 84 of the Rules of the Superior Courts, of certain decisions of the CRU. Such an application must, except in exceptional circumstances, be made within two months of the decision in question, which is a shorter period than the three-month period that is set out in Order 84 itself. It is likely that the general principles of Irish administrative law, including the right to apply for leave to apply for judicial review within that longer three-month period, apply to decisions of the CRU that are not explicitly listed in this part of the 1999 Act.

ACQUISITION AND MERGER CONTROL – COMPETITION

Responsible bodies

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

Merger control in Ireland is, in general, a matter for the Competition and Consumer Protection Commission (CCPC). The Commission for Regulation of Utilities (CRU) also has a separate power to revoke an electricity licence if a change in control has left the licence controlled by parties without adequate 'technical, financial or managerial strength'.

Review of transfers of control

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

The primary legislation governing this area is the Competition Act 2002 (as amended) (the Competition Act). The Competition Act requires that mergers, takeovers and joint ventures be notified to the CCPC for approval if the aggregate turnover in the state of the parties involved is not less than €60 million and at least two of the parties involved have turnover in the state of not less than €10 million.

The CCPC reviews transactions to see whether they would 'substantially lessen competition' in any market for goods or services in the state. This test is concerned solely with competition issues, ignoring employment and regional development, etc. The notification of a merger to the CCPC is mandatory where the thresholds in the Competition Act are met. Therefore, a proposed transaction cannot be implemented until the CCPC has issued a clearance determination in respect of the transaction, or where the statutory waiting period has elapsed without the CCPC having issued a clearance determination. Where competition issues arise, this clearance determination may have conditions attached (eg, the divestment of a specific part of the business or providing third parties with access to essential facilities).

There are two possible phases for the CCPC's investigation. During Phase I, the CCPC must decide within 30 working days. However, should the parties offer commitments during Phase I to assuage any competition concerns, the period is extended to 45 working days. These periods may be extended if the CCPC issues a formal request for information (RFI), which will stop the clock and reset it to day one when the parties respond in full to the RFI. The vast majority of transactions are dealt with in Phase I and the average Phase I review period for non-extended cases in 2020 was approximately 23 working days.

If the matter moves to Phase II, the CCPC has 120 working days from the original receipt of the notification at Phase I or, if the CCPC has issued an RFI in Phase I, from the receipt of full responses to the Phase I RFI. The 120 working days may be extended to 135 working days if the parties offer commitments during Phase II. If the CCPC issues a formal RFI within 30 working days of opening Phase II, this period is suspended until the parties respond in full to the RFI.

On 1 July 2020, the CCPC's simplified merger notification procedure regime was commenced. The simplified procedure applies to certain categories of transactions that are unlikely to raise competition concerns. The simplified procedure has led to shorter review periods for non-complex cases. In 2020, the CCPC cleared seven mergers under the simplified procedure, taking an average of 13.4 working days to issue a decision.

Prevention and prosecution of anticompetitive practices

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

The CCPC is responsible for the enforcement of competition law in Ireland. The CCPC can undertake an investigation either on its own initiative or on foot of a complaint. Private parties can also take civil actions against other private parties in the Irish courts for breaches of the Competition Act.

Under the Electricity Regulation Act 1999, the CRU must have regard to the need to promote competition in the supply of electricity. The CRU must also monitor licensees to ensure that they comply with licence conditions. Under the terms of the standard licence to supply electricity, a dominant supplier is prohibited from predatory pricing or discrimination in supply.

The CCPC has an agreement in place with the CRU to facilitate cooperation in the performance of their respective functions in so far as they relate to issues of competition between undertakings.

Determination of anticompetitive conduct

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

Competition law in Ireland mirrors EU competition law.

Section 4 of the Competition Act (implementing article 101 of the Treaty on the Functioning of the European Union (TFEU)) prohibits agreements, decisions or concerted practices that have as their object or effect the prevention, restriction or distortion of competition (eg, price-fixing, market sharing or limiting production). Similar to the TFEU, Section 4 of the Competition Act also provides for the 'efficiency defence' where it can be demonstrated that the agreement or arrangement actually contributes to improving the production or distribution of goods or services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. The efficiency defence can be applied only on the condition that the competition restrictions are indispensable and substantial competition will not be eliminated.

Section 5 of the Competition Act (implementing article 102 of the TFEU) prohibits the abuse of a dominant position. Generally, a firm is considered to be dominant if it enjoys a position of economic strength that gives it the power to act, to an appreciable extent, independently of its customers or its rivals. Section 5 is not necessarily breached when a firm's vigorous competition takes sales away from less efficient rivals, as this is competition working properly. The examples of abuses provided under the Competition Act are identical to those under article 102 of the TFEU.

Preclusion and remedy of anticompetitive practices

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

The CCPC has extensive powers of investigation, which include the ability to conduct dawn raids or to compel individuals to give evidence under oath. However, the CCPC, unlike the European Commission, does not currently have the power to adopt its own binding decisions or to unilaterally impose fines. This position is due to change with the implementation of Directive 1/2019 (ECN+ Directive). Under the ECN+ Directive, EU member states are required to give their national competition authorities adequate investigative and fining powers. In January 2019, the CCPC confirmed that it will introduce a system of administrative civil fines of up to 10 per cent of worldwide turnover for competition infringements. Although the formal deadline for transposition (4 February 2021) has now passed, the ECN+ Directive has not yet been transposed into Irish law.

In Ireland, businesses or individuals that breach competition law may be subject to civil or criminal sanctions. In the case of the most serious types of anticompetitive conduct, criminal fines and prison sentences, on conviction on indictment, are as follows:

- a business can be fined up to €5 million or 10 per cent of its annual business turnover, whichever is greater; and
- an individual can be fined up to €5 million or 10 per cent of his or her annual individual turnover, whichever is greater. In the case of hard-core cartel infringements under Section 6(2) of the Competition Act, an individual can also be imprisoned for up to 10 years.

INTERNATIONAL

Acquisitions by foreign companies

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

No, except to the extent that, as set out in Directive 2019/944 (on common rules for the internal market for electricity), the European Commission retains a certifying role concerning any proposed acquisition of a European transmission network business by a non-EU entity.

Authorisation to construct and operate interconnectors

32 | What authorisations are required to construct and operate interconnectors?

The electricity regulatory authorisation required to construct an interconnector is an 'authorisation to construct an interconnector', issued by the Commission for Regulation of Utilities (CRU) under section 16 of the Electricity Regulation Act 1999 (the 1999 Act). The electricity regulatory authorisation required to operate an interconnector is a licence to 'transport electricity across and maintain an interconnector' issued by the CRU under section 14(1)(i) of the 1999 Act. Following a series of consultations in 2018, the CRU published a Policy for Electricity Interconnectors in which it listed its assessment criteria for electricity interconnection applications, encompassing technical, economic and regulatory criteria.

The CRU is currently consulting on the regulatory arrangements for cost-recovery applicable to each of two specific interconnector projects: the Celtic Interconnector (700 megawatts, to run between Ireland to France, under development by EirGrid plc and RTE (the French electricity transmission system operator)) and the Greenlink Interconnector (500 megawatts, to run between Ireland and Wales, under development by a private consortium).

Interconnector access and cross-border electricity supply

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

The Irish electricity transmission system is currently linked with that of Northern Ireland by a twin circuit 275 kilovolts alternating current connection. Since the establishment of the Single Electricity Market (SEM), arrangements for access to this interconnection have been subsumed into the unified dispatch of the all-island transmission networks, meaning that this interconnection capacity is allocated using an implicit auction.

EirGrid and SONI are jointly planning a major cross-border electricity transmission development between the existing high-voltage transmission networks of Ireland and Northern Ireland. The proposed interconnector is a 400 kilovolts overhead line circuit linking the existing 400 kilovolts substation in Woodland, County Meath, Ireland with a planned substation in Turleenan, County Tyrone, Northern Ireland – the 'North-South 400kV Interconnection'. As with the existing twin-circuit connection, it is proposed that the capacity of the new interconnection will be allocated using an implicit auction.

EirGrid Interconnector DAC, a member of the EirGrid group, owns a 500 megawatts high voltage direct current interconnector running between Ireland and Wales, known as EWIC. From the Integrated Single Electricity Market go-live, access to the EWIC has been facilitated through the sale and purchase of financial transmission rights.

TRANSACTIONS BETWEEN AFFILIATES

Restrictions

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

The standard electricity supply licence provides that where the licensee is in a dominant position in the market for the supply of electricity, and the licensee also owns a generation business, it is not permitted to give or receive cross-subsidies between the licensee's electricity supply business and any other business of the licensee or of an affiliate or related undertaking of the licensee. A similar restriction is contained in the standard electricity generation licence.

General principles of competition law, relating to transactions between dominant companies and their affiliates, are also relevant.

Enforcement and sanctions

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

According to the Electricity Regulation Act 1999, it is the responsibility of the Commission for Regulation of Utilities (CRU) to enforce the terms and conditions of a supply or generation licence. Ultimately, the CRU has the power to revoke a licence if the licensee fails to comply with a direction, a determination or an order.

UPDATE AND TRENDS

Key developments of the past year

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

The Single Electricity Market (SEM) Committee is currently consulting with the Irish and Northern Irish electricity sectors concerning the implementation of articles 12 and 13 of Regulation (EU) No. 2019/943 (part of the EU clean energy package), which relate generally to dispatch and redispatch, and which raise further specific issues that include:

- the interpretation of 'dispatch' and 'redispatch', as used in Regulation (EU) No. 2019/943, insofar as these relate to the existing mechanics of the Single Electricity Market;
- the nature and effect, under Regulation (EU) No. 2019/943, of the 'decremental actions' that may be taken by the transmission system operator concerning units having priority dispatch;
- which actions of the Irish transmission system operator are properly considered 'market-based' and 'non-market-based' redispatch under the current market rules; and
- a proposal for the determination of the appropriate level of compensation for non-market-based redispatch and how this can be implemented.

The outcome of this consultation will have significant implications for the availability, on new and existing Irish electricity generators, of compensation in respect of the constraint and curtailment events that are expected to increase in frequency as the Irish market share of renewable generators continues to increase.

MASON
HAYES &
CURRAN

Eoin Cassidy

ecassidy@mhc.ie

Peter McLay

pmclay@mhc.ie

William Carmody

wcarmody@mhc.ie

South Bank House
Barrow Street
Dublin 4
D04 TR29
Ireland
Tel: +353 1 614 5000
Fax: +353 1 614 5001
www.mhc.ie

Other titles available in this series

Acquisition Finance	Dispute Resolution	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Distribution & Agency	Islamic Finance & Markets	Public Procurement
Agribusiness	Domains & Domain Names	Joint Ventures	Public-Private Partnerships
Air Transport	Dominance	Labour & Employment	Rail Transport
Anti-Corruption Regulation	Drone Regulation	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Digital Business			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)