

# Ukraine

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## 1 Overview of Natural Gas Sector

**1.1 A brief outline of Ukraine's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.**

In 2010, the gross domestic consumption of natural gas in Ukraine amounted to 57.7 billion cubic metres (Bcm), which is 11.1% more than in 2009. In 2010 only 35% of gross domestic consumption was covered by domestic production of natural gas ([www.naftogaz.com](http://www.naftogaz.com)). The proved reserves of natural gas in Ukraine are about 1.1 trillion cubic metres. The Ukrainian gas grid comprises of two basic parts: (1) gas transportation (transit) system; and (2) gas distribution networks.

The GTS of Ukraine is one of the largest in the world and consists of 39.8 thousand kilometres of pipelines and 112 compressor plants, with a total capacity of 5450 MW. The total annual transmitting capability of GTS is 290 Bcm (incoming) and 179 Bcm (outgoing). Ukraine transmits about 95–117 Bcm per year to the Western and Central European countries and is technically capable to increase such transportation to 142 Bcm per year without expanding the GTS. The system also includes 13 underground gas storage facilities (UGSF), with a total capacity of 34.5 Bcm. The Ukrainian system of UGSFs is the second largest in Europe, following Russia.

The length of natural gas distribution networks exceeds 370,000 kilometres and is expanding. Over 78% of residential real estate in cities and 38% in countryside Ukraine are connected to gas networks. Natural gas is being supplied to 428 cities, 600 towns and 12.4 thousand villages. More than 147 thousand industrial and utility enterprises, as well as 13.4 million of residential apartments and private households, are connected to natural gas networks.

The main producer and supplier on the Ukrainian natural gas market is the state-owned company National JSC "Naftogaz of Ukraine" ("Naftogaz"). The divisions and subsidiaries of Naftogaz control about 90% of Ukrainian natural gas production. The Ukrainian GTS is under operation of Subsidiary Company "Ukrtransgaz" ("UTG"), which is also a subsidiary of Naftogaz.

The Ukrainian gas infrastructure does not contain LNG terminals. However, the construction of the first LNG terminal was announced as one of the National Projects. The tender for the relevant

feasibility study took place in 2011 and was awarded to the Spanish Gas Natural Fenosa Engineering (previously SOCOIN). The terminal is expected to have an annual capacity of 10 Bcm of gas.

## 1.2 To what extent are Ukraine's energy requirements met using natural gas (including LNG)?

Ukrainian energy supply is based on mix of energy sources where natural gas occupies the largest share, followed by oil, coal and uranium. Although the development of renewable and alternative energy sources has recently found significant support from the Government, their current share in the Ukrainian energy balance is rather low.

According to the Energy Strategy of Ukraine, until 2030 (approved by the Government resolution dated 15 March 2006 No. 145), the official structure of energy consumption in Ukraine has been as follows:

- natural gas – 41%
- oil – 19%
- coal – 19%
- uranium – 17%
- water resources and other renewable energy – 4%

## 1.3 To what extent are Ukraine's natural gas requirements met through domestic natural gas production?

In 2010, domestic natural gas production covered approximately 35% of Ukraine's gas requirements, which is 20.67 Bcm out of 57.7 Bcm consumed. The remaining consumption is based on natural gas purchased mainly from Gazprom (Russia).

## 1.4 To what extent is Ukraine's natural gas production exported (pipeline or LNG)?

In 2010, Ukraine exported about 6 million of cubic metres of domestically produced gas to Poland.

## 2 Development of Natural Gas

### 2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The key normative acts regulating exploration and production of natural gas are:

- (i) Subsoil Code, No.192/94-BP, dated July 27, 1994;
- (ii) Oil and Gas Law, No. 2655-III, dated July 12, 2001;
- (iii) Production Sharing Agreements Law, No. 1039-XIV, dated September 14, 1999;
- (iv) Mining Law of Ukraine, No 1127-XIV dated October 6, 1999;
- (v) Gas Market Law, No. 2467-VI, dated July 8, 2010; and
- (vi) Rules of Special Permits Issuance (Governmental Resolution No. 615, dated May 30, 2011).

The authorities regulating natural gas production and exploration activities and their key functions are:

- (i) Verkhovna Rada (Parliament) of Ukraine has the authority with regard to strategic aspects of natural resources use by means of laws and parliamentary resolutions;
- (ii) Cabinet of Ministers of Ukraine implements State policies with regard to natural resources;
- (iii) State Service of Geology and Mineral Resources of Ukraine implements the State policy in the area of geological study and efficient use of subsoil; the authority issues authorisations for the use of subsoil ("Geoservice");
- (iv) Ministry of Energy and Coal Industry is responsible for the authorisations related to commissioning of mining facilities;
- (v) National Energy Regulation Commission is responsible for tariff policies and gas supply licences; and
- (vi) State Service for Mining Supervision and Industrial Safety of Ukraine (the "Mining Authority") supervises the industrial safety requirements in relation to mineral resources production and exploration.

### 2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Production and exploration of mineral resources (including natural gas) are based on the special permit for the use of subsoil ("Special Permit"), issued by Geoservice.

As a general rule, Special Permits are issued based on a competitive basis through auctions. Certain exceptions, whereby the applicants are entitled to apply for the Special Permits on a non-competitive basis, are as follows:

- (a) the applicant for the production-related Special Permit has carried out geological exploration at its own expense and proved and/or approbated the reserves with the State Reserves Commission;
- (b) the applicant for the exploration and pilot production-related Special Permit has acquired right of ownership, lease or concession to the integral property complex designated for

natural gas production/processing;

- (c) reserves of natural gas for a given field are proved by the State Reserves Commission to be insignificant; and
- (d) exploration and/or production is carried out based on a Production Sharing Agreement ("PSA").

Rights under the Special Permits are non-transferable, however, Special Permits may be re-issued by Geoservice to the parent or subsidiary company of the current permit holder (such re-issuance is not subject to auction).

When direct application for a Special Permit is not available, investors have the following options of obtaining control over authorisations:

- (a) acquisition of an interest in a Special Permit holder;
- (b) entering into a joint activity agreement with a Special Permit holder; and
- (c) entering into the PSA with the State (in this case the State undertakes to procure the issuance of the Special Permit to the investor, as well as certain other required authorisations).

### 2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

Special Permits are issued for the following types and maximum durations of development of gas:

- exploration and pilot production – 5 years (offshore – 10 years); and
- production – 20 years (offshore – 30 years).

If production and/or exploration are based on the PSA, the duration of the Special Permit is the same as the term of the PSA (maximum PSA term is 50 years).

The conditions of subsurface use are specified in the Special Permit. Although the law does not envisage requirements as to expenditure obligation and work programmes, such requirements are typically specified in the Special Permit conditions (elaborated and negotiated with the issuing authority in the course of application for the Special Permit).

### 2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

Under the PSA Law, the State is entitled to the share of production determined by the relevant PSAs. With regard to those developments that are not based on PSAs and are carried out by private investors, the State does not have ownership interest or seek to participate in them as a matter of law or policy.

### 2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

According to the Tax Code of Ukraine, the main taxes specific for production of natural resources (including natural gas) are:

- (1) Rent payments at the base rate of UAH 237 per 1000 m<sup>3</sup> (and UAH 118.5 per 1000 m<sup>3</sup> produced from deposits situated below 5000 m). The rate is subject to multiplication by quotient, calculated as average customs value of the imported gas (calculated by the Ministry of Finance of

Ukraine), divided by USD 179.5 per 1000 m<sup>3</sup>.

- (2) (2) Payment for the use of subsoil at the base rate of UAH 37.78 per 1000 m<sup>3</sup> of natural gas. The rate may be subject to adjustment by a number of quotients, depending on type of deposit and certain parameters of production.

## 2.6 Are there any restrictions on the export of production?

The Ukrainian Law “On foreign economic activity” provides for possibility of licensing and establishment of quotas for export and import of certain goods by the Government. During recent years, including 2011, export of natural gas is subject to the obtainment of a licence from the Ministry of Economy.

## 2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Ukrainian currency regulations do not prohibit purchase of foreign currency for the purpose transferring funds derived from production in Ukraine. Such exchange and transfer are, however, subject to a number of regulatory requirements and restrictions, depending on the form of repatriation.

For the purpose of repatriation of dividends, the banking regulations require confirmation of: (a) registration of the foreign investment (at the stage of formation of dividend payer); and (b) formation of the capital of the dividend payer by the foreign investor.

If repatriation is made in the form of interest paid under agreements with foreign lenders (shareholders), such interest is subject to ceilings determined by the National Bank of Ukraine (“NBU”). For the fixed-rate interest loans maximum permitted rates are set as follows: (i) with a term less than one year – at 9.8% per annum; (ii) with a term from one to three years – at 10% per annum; (iii) with a term of exceeding three years – at 11% per annum. The maximum permitted rate of interest under a floating rate interest is three-month USD LIBOR plus 7.5. Interest rates are viewed by NBU as inclusive of contractual interest, any fees, default interest and other charges provided by the loan agreement.

In case the funds are repatriated as payments under service agreements, such payments may be subject to price valuation acts issued by the division of the Ministry of Economy of Ukraine (confirming market price of such services).

## 2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

The general rule, specified by the Oil and Gas Law, prohibits the transfer of rights under Special Permits to third parties, as well as contributing them in-kind either in the capital of subsidiary companies or the joint activity.

The exception would be assignment of rights and obligations under PSAs, subject to consent of the State. In case of the assignment, Special Permits should be re-issued to the assignee within 30 days after the assignment has taken place.

Technically, another exception is the option of having Special Permit re-issued (as result of introducing amendments to it) from the permit holder to its subsidiary company (or *vice versa*), if the gas production property complex was transferred to such “receiving” party as well and participation exceeds 50%.

## 2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

The Ukrainian law does not require the participants to provide such security. At the same time, such requirement may be specified in the tender conditions announced by the State for the purpose of PSAs.

## 2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

As a general rule, the rights of development may not be pledged because Ukrainian law allows the pledge of only those assets/rights which may be disposed of by their owner.

The above rule may be not applicable to rights under PSAs, assuming the State has given consent to their assignment and/or pledge by the producer. Note should be taken that the PSA Law does not directly allow or disallow the pledge of rights and the practical possibility of the pledge remains to be tested in practice.

## 2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Apart from the Special Permit, development of natural gas reserves is subject to the following principal authorisations:

- (1) Mining Lease, issued by the State Service for Mining Supervision and Industrial Safety of Ukraine.
- (2) Land rights, typically in form of land lease or ownership granted by local authorities.
- (3) Permits related to construction and commissioning of gas wells and other gas production and transportation facilities: (a) consent of local authority for construction of the hazardous object; (b) audit of the construction project by a certified auditing organisation; (c) permission for construction works issued by the construction authority; (d) commissioning certificate issued by the construction authority; (e) registration of production facilities as hazardous objects with the Mining Authority; (f) conclusion of environmental audit, issued by the Ministry of Environment; (g) emissions permit, issued by the Ministry of Environment; and (h) public health compliance certificate issued by the State Public Health and Epidemiological Service of Ukraine.

## 2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

According to the Subsoil Code of Ukraine, if development of mineral deposits is no longer appropriate or they are fully developed, the mining facility should be liquidated or abandoned. The consent of Governmental authority for the State-owned objects and of the local authority for other companies is required. The procedure for liquidation and abandonment of mining facilities is approved by regulation of the Mining Authority.

## 2.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

The activity regarding gas storage is subject to the licence issued by

NERC. The key licence requirements are:

- (1) the applicant should have the right of ownership or lease to the UGSF having capacity above 5 million m<sup>3</sup>;
- (2) the applicant should have entered into the agreements with customers regarding input, storage and withdrawal and/or provision of gas reserve;
- (3) the applicant should carry out the gas storage activity only in those storage facilities which he owns or uses in accordance with the list of underground storages approved by NERC;
- (4) the applicant should have entered into the sale-purchase agreements regarding natural gas designated for the applicant's own operational purposes; and
- (5) the applicant should not carry out gas distribution and/or gas supply activities.

Construction and operation of UGSFs should be based on a Special Permit. The maximum duration of this type of permit is 50 years.

The Gas Market Law requires that gas storage companies should:

- (1) ensure equal rights of access to the facilities to all subjects of gas market; and
- (2) comply with legislative requirements regarding gas storage, *inter alia*, with regard to volumes and duration of input, storage and withdrawal of gas, procurement for and the use of the gas reserves in accordance with the contracts entered into by the operator of the facility.

### 3 Import / Export of Natural Gas (including LNG)

#### 3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Cross-border sales or deliveries of natural gas are subject to common requirements set for such sales or deliveries. Export of natural gas is subject to licensing by the Ministry of Economy of Ukraine and approval of the Ministry of Energy and Coal Industry. The key criterion for issuance of the license is the sufficiency of the natural gas balance for the purpose of domestic supply.

### 4 Transportation

#### 4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

The Ukrainian gas grid consists of the following elements:

- (1) Gas transportation system (the "GTS"). The GTS is a production property complex comprising of technologically integrated objects designated for transportation and storage of natural and associated gas and including:
  - main gas pipelines;
  - pipeline branches;
  - gas distribution stations; and
  - underground gas storage facilities.
- (2) Gas distribution network(s) (the "GDN(s)"). GDN is a production property complex comprising of technologically integrated objects, designated for transportation of the natural and associated gas from the gas distribution stations to the consumers.

GTS is operated by UTG, which has regional divisions managing the relevant sectors of the system. GDNs are operated by local gas distribution companies (the "Distributor(s)"). The Distributors are, in certain cases, directly or indirectly controlled by Naftogaz.

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#### 4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

The requirements are substantially similar to those described in paragraph (3) of question 2.11 above.

#### 4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

For the purpose of construction of a gas transportation facility, the developer should either lease or purchase the relevant land plot. If the land is State-owned, granting of rights to land should be based on resolution of the relevant municipality and/or State administration. For the purpose of such resolution, the developer should typically order preparation of the land allotment project with a specialised land management organisation. After the project has passed the required official audits and the local authority has issued the decision approving lease or purchase, the parties enter into the relevant purchase/lease agreement regarding the land.

There are no effective mechanisms of compulsory land acquisition.

#### 4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

Depending on the location of the gas production facilities, the supplier feeds the produced gas either to GTS or to GDN(s) (whichever is more feasible). Though conditions of access to GTS and GDN(s) are in many respects similar, there are however certain differences.

The legalities, which are common with respect to conditions of access to both GTS and GDNs, are:

- (1) Gas transportation companies of Naftogas and the companies which have licences for the distribution of natural and associated gas are obliged to ensure equal conditions of access to the gas transportation grid for all business entities, irrespective of their form of ownership.
- (2) The right of access to GTS and GDN(s) is granted to all suppliers of natural gas, which:
  - (i) Observe the established procedure of the supply of natural gas to the national economy and the Ukrainian population, as determined by the Cabinet of Ministers of Ukraine.
  - (ii) Observe the conditions and rules of business activity regarding the supply of natural gas at regulated and non-regulated tariff and the Access Procedure.
- (3) The pipeline operators are obliged to accept for operation the objects built without violations of the building norms and rules.
- (4) The suppliers, irrespective of their form of ownership, have equal rights with respect to use of the State-owned main gas pipeline transport.

The key GTS-specific legalities are:

- (1) The gas transportation company (the "GTS Operator") should connect the gas supplier to GTS subject observance by the gas supplier of the technical conditions.
- (2) The GTS Operator should provide the gas supplier with the

technical conditions for connection to GTS within 15 working days upon receipt from the gas supplier of the filled-in questionnaire.

- (3) The technical conditions should contain the technical and technological requirements that are directly relate to connection of the supplier's gas supply object to the GTS Operator's gas main pipelines.
- (4) The GTS Operator has no right to disallow the gas supplier to connect to the gas main pipeline if the gas supplier has observed the technical conditions for connection.
- (5) The GTS Operator is entitled to refuse from issuing of the technical conditions to the gas supplier in the following cases:
  - (i) The capacity of the main gas pipeline is insufficient;
  - (ii) The gas supplier is in breach of the Ukrainian law with respect to connection of gas supply object to the main gas pipelines.
- (6) The costs of connection are born by the gas supplier.

#### **4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?**

Ukrainian gas grid is an integrated transportation system. Monitoring and management of the system is carried out by the United Dispatching Center (UDC), subordinated to UTG. UDC has 6 territorial units throughout Ukraine that manage GTS and co-ordinate the activity of GDNs.

#### **4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?**

According to the Gas Market Law, subjects of gas market have equal rights of access to the Ukrainian GTS. Transportation, distribution and production companies should grant the access to the applicants based on the relevant agreements. Despite the declaratory provisions that require operators to provide access to the applicants (subject to compliance with relevant technological regulations), the Ukrainian law provides for no effective mechanisms for the applicants to compel the provision of such access, including the expansion of the facilities.

#### **4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?**

The terms of transportation of natural gas, including tariffs, are subject to State regulation. Tariffs for natural transportation are revised by NERC on a regular basis.

## **5 Transmission / Distribution**

### **5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.**

Please see our answer to question 4.1.

### **5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?**

Operation of distribution networks are subject to a licence issued by NERC. Tariffs for distribution of natural gas are subject to regulation by NERC.

### **5.3 How is access to the natural gas distribution network organised?**

Please see our answer to question 4.4.

### **5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?**

Although the law requires distributors to grant equal access (and, in certain instances, to expand the system), there is no effective mechanism to enforce the supplier's right of access.

### **5.5 What fees are charged for accessing the distribution network, and are these fees regulated?**

Conditions of access to the distribution networks are based, primarily, on the technical conditions issued by the network operator and the agreement between the supplier and the operator. The supplier bears the costs related to connection.

### **5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?**

If the utility is State-owned (wholly or partially), acquisition of the assets would be subject to limitations and requirements of the Ukrainian privatisation laws. The law does not provide for limitations in relation to purchase of the privately-owned gas distribution facilities, as such. Operation of such facilities, however, would be subject to requirements and restrictions discussed in other sections of this questionnaire. Note should be taken that operational licenses and authorisations are, as a general rule, not transferable.

## **6 Natural Gas Trading**

### **6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.**

The Ukrainian law has no regulatory framework for natural gas trading.

### **6.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?**

Gas commodities cannot be traded under the Ukrainian regulatory framework.

## 7 Liquefied Natural Gas

### 7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Currently, there is no existing LNG facility in Ukraine. However the construction of LNG terminal was announced as one of the National Projects and the tender for feasibility study preparation took place in 2011. The Spanish Gas Natural Fenosa Engineering (previous SOCOIN) was chosen to conduct the feasibility study of future LNG terminal. Ukraine, which depends almost entirely on Russian gas supplies, plans to build the terminal before the end of 2015 (see also question 1.1).

### 7.2 What Governmental authorisations are required to construct and operate LNG facilities?

There is no regulatory framework for the construction and operation of LNG facilities in Ukraine.

### 7.3 Is there any regulation of the price or terms of service in the LNG sector?

No, there is not.

### 7.4 Outline any third-party access regime/rights in respect of LNG Facilities.

There are no third party access regulations regarding LNG Facilities in Ukraine.

## 8 Competition

### 8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

The authority responsible for regulation of competition aspects in Ukraine is the Anti-Monopoly Committee of Ukraine.

### 8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The set of applicable criteria depends on a particular type of anti-competitive conduct. For example, actions of undertakings that may qualify as concerted practices involve such criteria as prevention, elimination, or restriction of competition, while abuse of dominance operate the same criteria as well as infringement upon the interests of other undertakings or consumers which would have been impossible in a competitive environment. In contrast merger control rules deal with a different set of criteria: whether a transaction leads to monopolisation or substantial restriction of competition in the market or its segment.

Competition laws further define a number of specific type of offences inherent to a particular abusive behaviour, though the relevant lists are non-exhaustive and more generic criteria will always apply when it comes to qualification of certain actions or inaction of an undertaking.

### 8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

With regard to prohibited restrictive agreements or practices, AMC has the following key powers:

- Issuing of orders regarding, in particular, prohibition of practices, discontinuation of infringements, elimination of consequences of infringements.
- Imposition of fines in the amount of 10% of turnover of the violating party in the year immediately preceding the year when the fine was imposed.

### 8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Under the Competition Law, the transaction would be notifiable and require prior approval of the AMC if it qualifies as concentration and all of the following thresholds are met:

- The combined worldwide asset value or turnover of the participants (including their corporate group) in the financial year preceding the year of the transaction exceeded EUR 12 million.
- Each of the parties to the concentration (including their corporate group) had worldwide asset value or turnover in the financial year preceding the year of the transaction in excess of EUR 1 million.
- The value of assets located in Ukraine or Ukrainian turnover of either of the parties to the concentration (including their corporate group) in the financial year preceding the year of the transaction exceeded EUR 1 million.

There is also a market share test, which applies independently. The AMC clearance is required if either the individual or combined market share of the parties in the market concerned or the adjacent market exceeds 35%.

The merger review procedure includes the following steps:

pre-approval period: 15 calendar days upon submission;

- phase I review: 30 calendar days of the AMC's decision that the notification is complete;
- phase II review: although the period is limited to three months from the AMC's decision to initiate a phase 2 review, in practice it may take longer if additional documents, information and/or expert evidence are required.

## 9 Foreign Investment and International Obligations

### 9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

There are no such special requirements in relation to natural gas sector.

## 9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

The influence of international treaties over the Ukrainian regulatory system of natural gas sector is rather limited. Although some normative acts are made based on international treaties (such as, e.g. the Procedure of access to gas transportation system approved by the order of Naftogaz No. 79, dated March 26, 2001, which is made based on the Energy Charter Treaty), they are, as a rule, not well integrated into the existing legal framework and therefore often lack efficiency and enforceability.

## 10 Dispute Resolution

### 10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

The dispute resolution procedures between Governmental authorities, including NCRE and natural gas sector players (companies and individuals), falls under jurisdiction of administrative courts and the Code of Administrative Procedure. The dispute resolution procedures between the companies fall under jurisdiction of commercial courts and Commercial Procedure Code. The dispute resolution procedures between companies and individuals, and between individuals and other individuals, falls under jurisdiction of civil courts and the Code of Civil Procedure.

### 10.2 Is Ukraine a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by the Soviet Union in 1960 and entered into effect for Ukraine as of 1961. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was ratified by Ukraine in 2000.

### 10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Generally, there is no special difficulty in litigating or seeking to enforce judgments or awards against Government authorities or State bodies, provided respective decisions were rendered in Ukraine.

Foreign court decisions are unenforceable in Ukraine, except if there is a bilateral treaty with Ukraine or under the reciprocity principle. Foreign arbitration awards are enforceable in Ukraine based on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, Ukrainian courts may refuse to enforce arbitral decisions against Government

authorities or State bodies referring to a breach of the public policy. Moreover, some complexities may arise in cases when Government authorities or State bodies do not waive state immunity.

### 10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

Generally, there is no difference between Ukrainian and foreign corporations before the law. One of the most prominent cases is recognition and enforcement by Ukrainian courts of the award of the Arbitration Institute of Stockholm Chamber of Commerce, dated 8 June 2010, in the case of RosUkrEnergog against Naftogaz, whereby the latter was obligated to pay penalties in favour of RosUkrEnergog in the amount exceeding USD 130 million and return the 12.1 Bcm of natural gas.

## 11 Updates

### 11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Ukraine.

The key recent legislative updates are adoption of the Gas Market Law and liberalisation of the PSA law that make regulatory systems more stable and transparent for foreign investors.

Other important updates concerned significant reforms with regard to alternative gas sources, such as coal bed methane and shale gas. The reforms are driven by Ukraine's increasing need of diversifying its energy sources and reducing the dependence on the imported natural gas.

Based on the recent legislative developments, investors expect further liberalisation of the market rules. In particular, in light of recent negotiations between Ukraine and Russia over gas prices and the anticipated separation of vertically integrated companies of Naftogaz, many players expect that Ukraine will de-regulate its gas transportation system and, possibly, lift the prohibition of privatisation of the assets of Naftogaz and Ukrtransgaz.

Another important expectation is that legislative loopholes that prevent effective implementation of the PSA Law will be eliminated, in particular, by means of: (a) adoption of the tender rules and procedures for the applicants; and (b) option for the state companies to be participants in the PSAs as the nearest coming steps.

Recent reforms (as well as expectations of further reforms) in the energy sector have resulted in the increasing interest of foreign and local investors to Ukrainian gas assets and have led to significant growth of market activity in the industry. The past year has seen a number of acquisitions of gas assets by foreign investors, as well a number of IPOs.

### Acknowledgment

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