Gas Regulation 2021

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LEXOLOGY®
Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the nineteenth edition of *Gas 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 new chapters on Colombia and Iraq.

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

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

LEXOLOGY
Getting The Deal Through

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Nigeria

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DOMESTIC SECTOR OVERVIEW

State of the market

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

Natural gas is produced in Nigeria either as a consequence of oil production (associated gas) or from natural gas fields (non-associated gas) by parties who have been granted rights by the Federal Government of Nigeria to exploit oil and gas resources within specified lease areas. According to the Nigerian National Petroleum Corporation's (NNPC) Annual Statistics Bulletin for 2019, Nigeria's proven gas reserves at the end of 2019 was 203.45 trillion cubic feet (tcf) with production volumes for 2019 stated to be 2.864tcf of gas. Of the produced volumes, 2.620tcf of gas (91.47 per cent) was utilised for domestic, export and non-commercial purposes, including flared gas. Domestic natural gas utilisation for power and industrial purposes accounts for 0.427tcf of gas, that is, 14 per cent of the total gas production for 2019.

There are three gas pipeline networks in Nigeria: the south eastern network, the eastern network and the western network. An inter-connector of the networks in the eastern part of the country and the western network, the Obiafu–Obrikom pipeline, is nearing completion. Construction commenced in 2020 on the Ajaokuta–Kaduna–Kano gas pipeline, a 40-inch, 614km pipeline that will transport natural gas produced from the Niger Delta to the underserved northern part of the country. A gas transportation network code took effect in August 2020.

Natural gas is supplied into the domestic market to wholesale offtakers in the electricity, manufacturing and industrial sectors. Gas sale is undertaken either bilaterally between producers and end-use offtakers, or through gas marketing companies and also through companies exclusively licensed to distribute gas through pipelines in specific geographical areas. There is also a growing number of players in gas distribution through virtual pipelines.

Based on the data in the NNPC Annual Statistics Bulletin, Nigeria exported 1.257tcf of gas, 43.9 per cent of its natural gas production. Nigeria is a major exporter of liquefied natural gas (LNG). The Nigeria LNG Limited is producing up to 22 million metric tonnes of LNG per annum from its sixth train. A seventh train has been approved for construction by its shareholders. Beyond LNG, natural gas is exported to markets in West Africa through the West African Gas Pipeline, while several million metric tonnes of natural gas liquids are exported from Nigeria to global markets annually.

Consumption

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

According to the International Energy Agency's Africa Energy Outlook for 2019, Nigeria utilised the natural gas equivalent of 15 million tonnes of oil equivalent (mtoe) in meeting its energy needs in 2018. This represented 9.68 per cent of the country's total energy needs of 155mtoe, which is predominantly met with oil and bioenergy. Natural gas utilised in meeting Nigeria's energy needs is largely produced locally; however, there are occasional imports of LPG. It is the policy of the government that these imports be completely displaced through increased domestic production.

Government policy

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

The overarching policy objective of the government as captured in the National Gas Policy is to move Nigeria away from its reliance on crude oil exports to a gas-based industrial economy. The Minister of Petroleum Resources is responsible for the formulation of policies for the petroleum sector. However, the Federal Executive Council, which is the cabinet, is the highest policy-making organ in the country and ultimately approves polices prepared by the Minister.

The Ministry of Petroleum Resources is responsible for the implementation of the National Gas Policy. This task is undertaken through its sector agencies such as the NNPC and the Department of Petroleum Resources (DPR).

Regulatory authorities

4 Which authorities make regulatory policies and decisions in respect of the production, transmission, distribution and supply of natural gas?

The Ministry of Petroleum Resources is headed by the Minister of Petroleum Resources and has responsibility for policies relating to the petroleum sector in Nigeria. The Minister is also responsible for the supervision of activities in the sector by virtue of powers granted under relevant legislation such as the Petroleum Act and Oil Pipelines Act. The Minister also has the authority to grant, renew and revoke licences for the exploitation of gas resources and regulates all related activities through the DPR. including the granting of licences to construct and operate gas pipelines.

There is a Department of Gas established under the National Gas Supply and Pricing Regulations as the regulator for the gas sector. Its scope of authority includes the determination of gas pricing, announcement of the country's annual domestic gas requirement, allocation of a domestic gas supply obligation to gas producers, establishment of guidelines and codes of conduct for operators in the downstream gas sector and ensuring equitable and transparent access to the gas transportation network. The Department of Gas is, however, not operational and, as such, its functions are currently carried out by the DPR.

The Federal Ministry of Environment (FMoE) regulates matters relating to the environment, including activities that may have an adverse impact on the environment, such as the installation of gas transportation and storage facilities. An environmental impact assessment for such facilities must be conducted and certified by the FMoE before such facilities are set up. Another relevant agency is the Nigeria Content Development and Monitoring Board, which ensures that local content objectives are met with respect to the contracting and operational requirements for the development of oil and gas facilities.

Decisions of the Minister or the agencies may be challenged by an aggrieved party at the Federal High Court.

REGULATION OF NATURAL GAS PRODUCTION

Ownership and organisation

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

Natural gas is largely produced from oil mining leases held by petroleum joint ventures between the national oil company, Nigerian National Petroleum Corporation (NNPC), and third parties. Natural gas is also produced from sole risk concessions or from marginal fields held by private sector entities. Natural gas discovered in some oil-mining leases owned by the NNPC which are subject to production-sharing contracts (PSCs) do not have a clearly defined contractual framework for the development of such gas, as Nigerian PSCs are focused on crude oil exploration and development. Hence, gas in Nigerian PSCs is currently stranded in the absence of commercial terms.

Revenues from natural gas production are earned by the government through royalties from gas production, taxes on profits earned by the various producers from gas projects and from revenues derived from its share of equity gas in its petroleum joint ventures with third parties. The government also earns dividend income from its investment in the Nigeria LNG Limited.

Regulatory framework

6 | Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

The principal legislation governing petroleum, which is defined as including gas, is the Petroleum Act. The Minister of Petroleum Resources is empowered by the Act to grant Oil Exploration Licences, Oil Prospecting Licences and Oil Mining Leases, which enable the grantee to win, work, carry away and dispose of petroleum. A grantee has no limit to how much natural gas can be produced from a licence or lease area.

There are a number of regulations passed pursuant to the Petroleum Act, such as the Petroleum Regulations, Petroleum (Drilling and Production) Regulations and the National Gas Supply and Pricing Regulations, which impact on the production, transportation and sale of gas. The enforcement of the Minister's powers under the Petroleum Act and these regulations is carried out by the Department of Petroleum Resources, a department under the Ministry of Petroleum. Such enforcement actions include the revocation of licences or leases, which may be challenged by a grantee at the Federal High Court.

Unconventional gas production

7 | Are there different rules for, or any restrictions on, unconventional natural gas production (including fracking)?

There are no unconventional methods employed for natural gas production in Nigeria, such as fracking.

Required security and guarantees

8 | Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?

Participants are not required to provide security or guarantees in order to be granted a licence to explore for or store gas. The only requirement is that such participants satisfy the Department of Petroleum Resources of their financial capacity to fund exploration.

REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE

Ownership and infrastructure

9 | Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.

Natural gas pipeline and storage infrastructure can be owned by public and private parties as the relevant legislation providing for the construction, operation and maintenance of gas pipelines, the Oil Pipelines Act 1956, places no restriction on ownership. All that is required is that an applicant obtain an oil pipeline licence from the Minister of Petroleum Resources.

The main natural gas pipeline transportation infrastructure in Nigeria – the Alakiri–Obigbo–Ikot Abasi Pipeline (the Eastern Network), the Escravos–Lagos Pipeline System (the Western Network) and the proposed Ajaokuta–Kaduna–Kano gas pipeline connecting the North – are all owned by the Nigerian Gas Processing and Transportation Company (NGPTC), a subsidiary of the Nigerian National Petroleum Corporation. Some upstream natural gas pipelines, gas-processing facilities and other related infrastructure have also been developed by gas producers for their operations. The NGPTC has granted franchises to private parties such as Shell Nigeria Gas, Gaslink Nigeria Limited and Falcon Corporation Limited for the development of gas distribution infrastructure in specified markets on a build, own, operate and transfer basis.

Regulatory framework

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

The construction, operation and maintenance of pipelines in Nigeria is regulated by the Oil Pipelines Act 1956, the Oil and Gas Pipeline Regulations and the Guidelines and Procedures for the Construction, Operation and Maintenance of Oil and Gas Pipelines and their Ancillary Facilities.

The Minister of Petroleum Resources is empowered under the Oil Pipelines Act to grant:

- permits to survey routes for pipelines; and
- licences to construct, maintain and operate such pipelines to applicants.

The Department of Petroleum Resources (DPR) under the Ministry of Petroleum effects the implementation of the Oil Pipelines Act and Minister's powers. The Petroleum Act 1969 prohibits any person from storing petroleum products, which will include liquefied natural gas

(LNG) and liquefied petroleum gas (LPG), without a licence granted by the Minister.

Regulation 40 of the Petroleum (Drilling and Production) Regulations issued pursuant to the Petroleum Act 1969 also requires that upstream producers only store natural gas production in receptacles such as pipelines approved by the DPR for such purpose. With respect to LPG, regulation 29 of the Petroleum Refining Regulations issued pursuant to the Petroleum Act 1969 requires that LPG storage meets the DPR's design and construction standards and that LPG is stored and handled by a refiner in accordance with good refinery practices.

Land rights

11 | How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?

Land use in Nigeria is governed by the Land Use Act 1979, which vests title to land in state governments and also recognises the right to land by persons who held title or were in occupation of communal land before the commencement of the Act. Importantly, the Land Use Act provides that the use of land for purposes of petroleum operations is priority land use. This entitles a company that proposes to construct a natural gas pipeline and ancillary facilities an overriding right, upon the grant of an oil pipeline licence by the Minister of Petroleum Resources to such company pursuant to the Oil Pipelines Act 1956, to enter upon, take possession of or use a strip of land of a width not exceeding 200 feet or of such other width or widths as is specified in the licence to construct, maintain and operate an oil pipeline and ancillary installations, subject to the payment of compensation for such use of land to the owner or occupier of the land.

The method for obtaining land rights for a natural gas distribution network is the same as that described above. Where additional land outside the scope granted under an oil pipeline licence is required by a grantee, such land will need to be acquired from the title holder.

Access

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

Section 18 of the Oil Pipelines Act empowers the Minister of Petroleum Resources to make a determination as to the grant of third-party access to pipelines following receipt of an application for such access by a third party. If satisfied that the third party's use of the pipeline will not prejudice the safe and efficient operation of the pipeline or the owner's use of the pipeline, the Minister may approve the application. The owner and third party are required to agree on the conditions for use of the pipeline, failing which the Minister will determine the conditions. Notwithstanding any agreement by the parties, the Minister is empowered by the Act to regulate the charge for the third party's use of the pipeline.

As regards natural gas transportation pipelines owned by the Nigerian Gas Company Limited or its successor gas transportation company, the NGPTC, access to the pipeline system and conditions for use are determined in accordance with the provisions of the Nigerian Gas Transportation Network Code launched by the Federal Government of Nigeria in August 2020. The Department of Petroleum Resources, as technical regulator of the oil and gas industry, has established an electronic platform for processing applications for licences to use the pipeline, the Network Code Electronic Licensing and Administrative System (NCELAS), and has indicated that the NCELAS will only be applicable for the use of the Escravos–Lagos Pipeline System and the Oben–Ajaokuta pipelines.

Persons licensed as shippers on the pipeline system may book capacity at entry and exit points on the pipeline. In this regard, the shipper is required to pay a transportation charge comprising a capacity charge and a commodity charge. The benchmark rates for determining the transportation charge are not provided in the Code. It is not certain how much of the transportation charge will be based on the US$0.8/MMScf gas transportation tariff prescribed by the Federal Government of Nigeria in the National Fiscal Policy 2016. Imbalances on the pipeline system are addressed in the Code and a shipper is required to use all reasonable endeavours to reduce its cumulative imbalance for any day. Failing this, the shipper will be liable to pay an imbalance charge for volumes exceeding the allowed thresholds.

Interconnection and expansion

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

There is no law or regulation that gives any natural gas supplier or authority the right to require a pipeline owner to expand its facilities to accommodate new customers.

Processing

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

The processing of natural gas is undertaken in accordance with the Petroleum Refining Regulations, 1974 and the DPR Guidelines for the Establishment of a Natural Gas Plant Facility in Nigeria, 2006. The DPR administers the Regulations, including ensuring the requirements for the establishment and operation of gas-processing plants are met.

A natural gas producer is required to obtain the approval of the DPR for the establishment of a processing facility. This involves first obtaining a licence to establish, followed by an approval to construct and, lastly, a licence to operate. Processing plants are generally to be operated in accordance with international standards for refining, and the operator is required to submit an annual programme of activity to the DPR at the beginning of every year.

Contracts

15 | Describe the contractual regime for transportation and storage.

Natural gas producers using the natural gas transportation pipelines owned by the NGPTC, and which are subject to the Nigerian Gas Transportation Network Code, are required to accede to a Network Framework Agreement by which the terms and conditions of the Code become applicable to the shipper. Such producers may also have entered into gas transportation agreements with the NGPTC for use of the pipelines prior to the entry into force of the Code. These legacy agreements are recognised by the Code, and the NGPTC may, with the assent of the DPR, continue to provide such transportation services on the terms of the legacy agreement. All such arrangements outside of the Code are, however, required to be migrated to the Code no later than six months from the effective date of the Code.

Gas transportation agreements are typically entered into for the use of pipelines not subject to the Code. For instance, any person that proposes to use pipelines belonging to upstream producers and holders of gas distribution franchises will enter into a gas transportation agreement with the pipeline owner.

The tariff currently applicable to the natural gas transmission network is US$0.8/MMScf.

REGULATION OF NATURAL GAS DISTRIBUTION

Ownership

16 | Describe in general the ownership of natural gas distribution networks.

While there is no restriction on private ownership of natural gas distribution networks, there is in effect a monopoly over gas distribution assumed by the Nigerian Gas Company (NGC), a wholly owned subsidiary of the Nigerian National Petroleum Corporation (NNPC), as owner of the gas transmission network in Nigeria. The NGC has now been unbundled into a gas processing and transportation company – the Nigerian Gas Processing and Transportation Company – and a marketing and distribution company, the Nigerian Gas Marketing Company (NGMC), which buys gas from upstream producers and sells it to offtakers. Both companies are wholly owned subsidiaries of the NNPC. The NGMC also grants franchises to private parties to develop gas distribution networks in franchise areas on a build, operate and transfer basis.

Regulatory framework

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

There is no difference between the statutory and regulatory structure for the operation of gas transportation pipelines and that for the operation of a gas distribution network. In either case, a permit to survey a gas pipeline route, followed by an oil pipeline licence, issued pursuant to the Oil Pipelines Act 1956, must be obtained for the construction and operation of natural gas pipelines. Also, compensation must be paid to the owner of land on which the gas pipelines and ancillary facilities are installed. Gas distribution utilities are not subject to public service obligations.

Access and pricing

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

The Minister of Petroleum Resources is empowered in the Oil Pipelines Act 1956 to grant access to a third party who makes an application to be granted access to use a pipeline. Such access will only be granted by the Minister where the third party's proposed use of the pipeline will not negatively impact the safe and efficient operation of the pipeline or the owner's own use.

The distribution tariff is a blended commodity price and an infrastructure tariff. It incorporates a regulated commodity price in the sale between the upstream and NGMC, the transportation tariff to NGC, and a marketing margin to NGMC plus a cost recovery charge by the local distribution company (LDC) for the recovery of the capital expenditure invested in the development of the gas distribution infrastructure. The origin of the cost recovery charge is the franchising arrangements between 'franchisees' selected by NGC to undertake gas distribution to distribute gas through low pressure pipelines in certain geographic areas. The franchise includes a tying arrangement whereby gas from NGMC, an affiliate of NGC, is sold by the LDC to end users at a discount to the price of an alternative or competing petroleum product. The end-user price is subject to adjustment to reflect changes in the price of petroleum product.

System/service expansion and limitation

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

There is no power given to any authority or regulator to require the operator of a gas distribution network to expand its system to accommodate new customers or to require the limitation of service to existing customers so that new customers can be served.

Contracts

20 | Describe the contractual regime in relation to natural gas distribution.

Gas distribution in Nigeria is organised around the franchising arrangements between 'franchisees' selected by the NGC to undertake gas distribution in certain geographic areas. The franchise includes a tying arrangement whereby gas from the NGMC, an affiliate of the NGC, is sold by the LDC to end users. The LDCs enter into standard Gas Sale and Purchase Agreements with their end-use customers.

The LDCs enter into gas transportation agreements for the transportation of gas produced from the upstream. However, this is not applicable to the use of gas transmission pipelines that are subject to the Nigerian Gas Transportation Network Code that governs the terms for the transportation of gas in certain pipelines. Shippers in those pipelines are required to have acceded to a framework agreement that makes the Code binding on such shipper. The operator of a facility delivering gas into the transmission pipeline system will be required to enter into a network entry agreement with the pipeline operator, while the operator of the facility taking gas off the pipeline, such as the operator of a natural gas distribution network, will be required to enter into a network exit agreement with the transmission pipeline operator.

REGULATION OF NATURAL GAS SALES AND TRADING

Ownership and organisation

21 | What is the ownership and organisational structure for the supply and trading of natural gas?

The supply and trading of natural gas is undertaken either directly by gas producers or by gas marketing companies. Most of the gas producers are unincorporated joint ventures between the Nigerian National Petroleum Corporation (NNPC) and international oil companies and, some local investors. Other producers are independent local companies operating on a sole risk basis. A major player in gas marketing is the Nigerian Gas Marketing Company (NGMC), a wholly owned subsidiary of the NNPC, which purchases gas from the upstream for onsale to end users in various markets. Natural gas is also traded by a growing segment of players in virtual gas pipeline companies that are transporting and trading gas through compressed natural gas and mini-LNG systems to underserved markets in Nigeria.

The Gas Aggregation Company Nigeria Limited (GACN), established pursuant to the Nigerian Domestic Gas Supply and Pricing Regulations 2008, acts as an intermediary between upstream producers and wholesale gas offtakers, and ensures that upstream gas producers comply with annual domestic gas supply obligations issued by the Department of Petroleum Resources to ensure adequate domestic supply of gas to strategic sectors, such as the power, strategic industrial and other commercial sectors.

Government oversight

22 | To what extent are natural gas supply and trading activities subject to government oversight? What authorisations are required to engage in wholesale trading of gas?

Gas producers are required under the National Gas Supply and Pricing Policy 2007 and implementing National Gas Supply and Pricing Regulations 2008 to dedicate a portion of their gas reserves for supply to the domestic sector. A penalty of US$3.50/MMBtu is payable by a gas producer for failure to meet the domestic gas supply obligation (DGSO) allocated to such producer. Also, any gas export project proposed by the natural gas producer will not be permitted until it meets its DGSO.

The Regulations also establish the Department of Gas in the Ministry of Petroleum Resources, which is required to allocate DGSOs to gas producers annually and also establish the price at which gas subject to the DGSO will be supplied. Gas volumes outside a producers DGSO can be sold at market-based 'willing seller/willing buyer' price.

Trading processes

23 | How are physical and financial trades of natural gas typically completed?

An offtaker that has applied to and obtained a gas purchase order from the GACN is entitled to negotiate a gas supply and aggregation agreement (GSAA) with a gas producer that has been issued a DGSO by the Department of Petroleum Resources.

There is a standard form GSAA that has the gas producer, offtaker and GACN as parties and, in respect of pricing, provides for the gas producer to be paid an aggregate price; a weighted average of all payments under similar GSAAs for sale of DGSO volumes received by GACN in an escrow account established for that purpose.

A gas producer that has satisfied its DGSO can contract with any offtaker for the sale of natural gas on a 'willing seller/willing buyer' price basis.

Available services and products

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

Wholesale and retail buyers of natural gas are not obliged to purchase a bundled product. However, the NGMC, a wholly owned subsidiary of the NNPC, and franchisees granted rights to develop and market gas within franchise areas typically sell gas to wholesale and retail buyers at a price that reflects the commodity cost payable to the gas producer, transmission cost payable to the transmission network operator (ie, the Nigerian Gas Processing and Transportation Company) and distribution cost shared by the franchisees with the NGMC.

REGULATION OF LNG

Ownership and organisation

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

A significant volume of LNG is produced for export to international markets by the Nigeria LNG Limited (NLNG). NLNG is a joint venture company between the Nigerian National Petroleum Corporation, Shell, Total and Eni.

NLNG currently operates six operational trains and a production capacity of 22 million metric tonnes per annum (MTPA) at Bonny Island in Rivers State. A final investment decision has been taken and engineering, procurement and construction contracts for the development of train 7 awarded in early 2020 for the increase of the liquefaction capacity to 30 MTPA. The facility includes gas transmission and liquefaction infrastructure, export and passenger jetties and dedicated ships for export owned by its subsidiary company, Bonny Gas Transport Limited.

Regulatory framework

26 | Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

An environmental impact assessment issued by the Federal Ministry of Environment pursuant to the Environmental Impact Assessment Act 1992 is required to construct LNG facilities. Upon the recommendation of the Department of Petroleum Resources, licences issued by the Minister of Petroleum Resources to establish, construct and operate a gas-processing facility need to be obtained pursuant to the provisions of the Petroleum Refining Regulations 1974.

Oil pipeline licences issued by the Minister pursuant to the Oil Pipelines Act 1956 are required for the construction of gas pipelines and ancillary infrastructure at the LNG facility. A licence to establish an oil terminal issued by the Minister pursuant to the Oil Terminal Dues Act 1965 will also be required for the construction of an LNG export terminal. Other required licences are for the storage of LNG and discharge of industrial waste. An export permit will also be necessary for the export of LNG.

Pricing

27 | Describe any regulation of the prices and terms of service in the LNG sector.

The sale of natural gas as feedstock to any plant producing LNG for sale into the domestic market is subject to the Export Parity Price, which is the average prior year price of all gas sold by producers to NLNG. However, the price of LNG produced for sale into the domestic market is not regulated.

MERGERS AND COMPETITION

Competition authorities

28 | Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

The Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal established by the Federal Competition and Consumer Protection Act 2018 have an overarching mandate to regulate anticompetitive or manipulative practices in any sector, including the natural gas sector.

Competition standards

29 | What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

The FCCPC is a newly established competition regulatory agency. As such, it is yet to make a determination in respect of the gas sector. However, it has a mandate to determine whether conduct is anticompetitive or manipulative by, inter alia, assessing whether there is participation in agreements to restrict or distort competition such as price fixing, dividing markets, limiting or controlling the production or distribution of goods or services, collusive tendering or making the conclusion of an agreement subject to some other obligation that has no bearing on the agreement. Others are a supplier unlawfully withholding products from a dealer, the abuse of dominant position and existence of a monopoly that is adverse to the public interest.

Enforcement

30 What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

The FCCPC is empowered to issue an order or directive requiring that any person it finds to be engaged in anticompetitive practices cease and desist from such activity immediately. A body corporate convicted of an offence under the Federal Competition and Consumer Protection Act 2018 may be liable to pay a fine as high as 10 per cent of its turnover in the preceding year.

The Petroleum Act also empowers the Minister of Petroleum Resources to take action such as the revocation of a licence where a licensee is engaged in practices contrary to the terms and conditions for the issuing of the licence or in exercise of the supervisory power over the oil and gas sector.

Merger control

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

The FCCPC has the authority to approve or disapprove mergers in the natural gas sector. Unless a merger falls below the merger notification threshold prescribed by the FCCPC, the Federal Competition and Consumer Protection Act 2018 requires that the FCCPC's approval is obtained for a merger resulting in change of control of the target undertaking.

Application to the FCCPC for review of a proposed merger and approval will require the preparation of an information memorandum describing, inter alia, the merger, transaction parties, nature of the acquiring and target companies' businesses, the controlling interest being acquired, economic rationale for the merger in relation to the Nigerian market and the target company's turnover in the preceding financial year. The FCCPC can take up to 60 business days, if no notice of extension is given, to determine if a proposed merger is approved or otherwise.

Price restrictions

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

There are no restrictions applicable to the inclusion of the purchase cost of a regulated gas utility in the price of services.

Corporate governance regulations

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

There are no such restrictions.

INTERNATIONAL

Foreign participation

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

Other than the requirement that a foreign company incorporate a local subsidiary, there are no special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector.

International agreements

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

Regulatory policy is only impacted by treaties or multinational agreements that have been domesticated by assent of or execution by the Nigerian government.

Cross-border sales and deliveries

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

The cross-border sale and delivery of natural gas is generally regulated by contract between the parties. An exporter of natural gas is, however, required to obtain an export clearance permit certificate from the Federal Ministry of Industry, Trade and Investment, as well as an export permit from the Department of Petroleum Resources, a department under the Ministry of Petroleum.

In addition, the Pre-shipment Inspection of Exports Act 1996 provides for the inspection of all exports from Nigeria to, inter alia, ascertain the quantity and quality of the exports, and requires that proceeds from the export of natural gas are paid into foreign currency domiciliary accounts held by the exporter in Nigeria.

An approval to export gas is made subject to a gas producer having complied with its gas supply obligation to the domestic market.

TRANSACTIONS BETWEEN AFFILIATES

Restrictions

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

Subject to compliance with transfer pricing rules and the disclosure and documentation requirements in the Nigerian Income Tax (Transfer Pricing) Regulations 2018, there are no restrictions on transactions between a natural gas utility and its affiliates.

Enforcement

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

There are no affiliate restrictions except for transfer pricing rules, which are enforced by the Federal Inland Revenue Services.

UPDATE AND TRENDS

Gas sector-specific regulation

39 Describe recent trends and developments in the regulation of the domestic natural gas sector.

Significant changes to the regulation of the Nigerian gas sector are being proposed by the Petroleum Industry Bill. A new regulatory, fiscal and commercial structure for gas is proposed for activities in the upstream, midstream and downstream.

Other regulatory developments of particular relevance to the gas sector

40 Describe any other recent regulatory trends and developments of particular interest to those operating in the domestic natural gas sector.

The Department of Petroleum Resources recently issued new guidelines for the development and operation of liquefied petroleum gas plants in the country.

Coronavirus

41 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In circulars to oil and gas industry operators and industry service providers regarding the management of the covid-19 outbreak, the Department of Petroleum Resources, which is the regulator of the Nigerian oil and gas industry, introduced measures to contain the spread of covid-19 in areas of operations including offshore and remote locations. Specifically, companies are required to maintain transit centres and are directed to ensure that no one travels to offshore and remote locations in the oil and gas industry without being fully subjected to established protocols such as covid-19 testing prior to travelling. Also, all operators are required to ensure that evidence of compliance with the protocols by personnel travelling to offshore and remote locations is duly documented.

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Anti-Money Laundering
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Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Business & Human Rights
Cartel Regulation
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Competition Compliance
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Corporate Immigration
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Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
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Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
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Government Relations
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Private Banking & Wealth Management
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