GAS REGULATION

Nigeria

LEXOLOGY
Getting The Deal Through

Consulting editor
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Gas Regulation

Consulting editors

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Dentons

Quick reference guide enabling side-by-side comparison of local insights, including into the domestic gas market, government policy and regulatory authorities; regulation of natural gas and unconventional gas production; regulation of natural gas pipeline transportation and storage, distribution, sales and trading; LNG regulation; mergers and competition, including price restrictions; international considerations, including foreign participation, treaties and other multinational agreements, and cross-border sales and deliveries; transactions between affiliates; and recent trends.

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DOMESTIC SECTOR OVERVIEW

State of the market

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 reservoirs (non-associated gas) by parties who have been granted rights by the Nigerian federal government to exploit oil and gas resources within specified lease areas. According to the Nigerian National Petroleum Corporation's (NNPC) Annual Statistics Bulletin for 2020, Nigeria's proven gas reserves at the end of 2020 was circa 203 trillion cubic feet (tcf) with 2,729.1 billion cubic feet (bcf) of natural gas produced during the year. Of the produced volumes, 2,535.75 bcf of gas (92.92 per cent) was utilised for domestic, export and non-commercial purposes (excluding flared gas), with flared gas volumes of 193.13 bcf (7.08 per cent). Domestic natural gas utilisation for power and industrial purposes accounted for 0.447 bcf of gas, that is, 16.4 per cent of the total gas production for 2020.

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, the Nigerian 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 such as mini-liquified natural gas (LNG) and compressed natural gas applications.

Based on data in the NNPC Annual Statistics Bulletin, Nigeria exported 1,257 bcf of gas or 45.9 per cent of its natural gas production. Nigeria is a major exporter of liquefied natural gas (LNG). 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.

Law stated - 10 January 2023

Consumption

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 155 Mtoe, 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 liquified petroleum gas. It is the policy of the government that these imports be completely displaced through increased domestic production.

Law stated - 10 January 2023

Government policy

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 policies prepared by the Minister.

Law stated - 10 January 2023

Regulatory authorities

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

By virtue of the Petroleum Industry Act (PIA), which was enacted in August 2021, the Minister of Petroleum Resources is responsible for formulating policies relating to the petroleum sector in Nigeria. The Minister is also responsible for the supervision of activities in the sector. The PIA established two new regulators for the upstream and midstream and downstream petroleum sectors, namely, the Nigerian Upstream Petroleum Regulatory Commission (the Commission) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority). The PIA does not explicitly provide for the independence of the regulators from the Minister; however, the remit or scope of the authority of each regulatory agency and the Minister are clearly defined. Also, there are important checks and balances in the legislation that limit the scope of the Minister's powers in relation to the regulators. For instance, upstream licenses may only be granted, renewed or revoked by the Minister, albeit upon the recommendation of the Commission. Each regulatory agency is given technical and commercial regulatory powers with wide-ranging powers of enforcement, such as powers to issue cease and desist orders, powers of seizure and powers to close premises.

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 under administrative law at the Federal High Court, subject to compliance with pre-action requirements under relevant legislation.

Law stated - 10 January 2023

REGULATION OF NATURAL GAS PRODUCTION

Ownership and organisation

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) (which, following the enactment of the Petroleum Industry

Act 2021 (PIA) and consequent restructuring of the petroleum industry, is transitioning into a corporate vehicle, known as Nigerian National Petroleum Corporation Limited (NNPC Ltd)) and third parties. Natural gas is also produced from sole risk concessions or marginal fields held by private sector entities. Natural gas discovered in some oil mining leases owned by 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. However, in April 2021, the NNPC signed a precedent-setting gas development agreement with one of its PSC contractors for the development of gas resources in one of the deep offshore oil mining leases, marking the first agreement in Nigeria for gas development in a PSC asset. More of such agreements are expected to follow in the coming months as a number of assets are mature for development.

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 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 Nigeria LNG Limited.

Law stated - 10 January 2023

Regulatory framework

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

The recently enacted PIA creates a new regulatory and fiscal regime for upstream gas operations. However, the rights of extant upstream title holders under the Petroleum Act, which was the previous legislation that governed the sector, are preserved until the expiration of the licences and leases issued under that legislation or until the holders of those licenses or leases elect to convert their licenses to petroleum prospecting licences (PPL) and petroleum mining leases (PML) created under the new PIA framework.

Regulations issued 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 remain applicable to holders of existing oil mining leases and oil prospecting leases and to the extent of corresponding provisions in the PIA supporting such regulations, will remain effective and transition into the new PIA regulatory framework.

Petroleum Exploration Licences are now granted by the Nigerian Upstream Petroleum Regulatory Commission (the Commission) while the Minister of Petroleum Resources is empowered by the PIA to grant PPLs and PMLs that 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.

As the technical and commercial regulator of upstream petroleum operations, the Commission administers and enforces compliance with the terms of conditions of these upstream licences, as well as regulates all aspects of operations involving natural gas exploration and production. Enforcement actions include recommending the revocation of licences or leases to the Minister, which may be challenged by a grantee at the Federal High Court.

Law stated - 10 January 2023

Unconventional gas production

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.

Law stated - 10 January 2023

Required security and guarantees

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

The PIA requires holders of a PPL to commit to a work programme supported by a bank guarantee, letter of credit or performance bond for an amount determined by the Commission, and that is issued by a bank that is acceptable to the Commission. There is no requirement to provide security or guarantees for the issue of a licence to store gas.

Law stated - 10 January 2023

REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE

Ownership and infrastructure

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. The relevant legislation providing for the construction, operation, maintenance of gas pipelines and the bulk storage of gas, the Oil Pipelines Act 1956 and the Petroleum Industry Act 2021 (PIA) place no restriction on ownership. The PIA, however, requires holders of upstream licences to carry out midstream and downstream petroleum operations, such as gas transportation and storage through separate corporate vehicles.

To carry out gas transportation activities, a gas transportation pipeline licence or a gas transportation network operator licence, or both, must be obtained from the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority), while, with respect to the storage of natural gas, a bulk gas storage licence must be obtained from the Authority.

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.

Law stated - 10 January 2023

Regulatory framework

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 and the Oil and Gas Pipeline Regulations, to the extent that they are not inconsistent with the PIA;
- the Guidelines and Procedures for the Construction, Operation and Maintenance of Oil and Gas Pipelines and their Ancillary Facilities; and
- the PIA.

The Minister of Petroleum Resources is empowered under the Oil Pipelines Act 1956 to grant permits to survey routes for pipelines. The PIA, however, entitles a licence or permit holder to a right of way for the laying, operation and maintenance of natural gas transportation pipelines.

The construction, ownership, operation and interconnection of natural gas transportation pipelines and storage can only be undertaken, pursuant to the PIA, by holders of licences issued by the Authority established under the PIA to regulate midstream and downstream petroleum operations. A gas transportation pipeline licence must be obtained from the Authority to carry out the transportation of natural gas, while a bulk gas storage licence must also be obtained to carry out the storage of natural gas.

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 and storage facilities approved by the Department of Petroleum Resource (DPR) for such purpose. With respect to liquefied petroleum gas (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.

Law stated - 10 January 2023

Land rights

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 (LUA 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 LUA 1979 provides that the use of land for purposes of petroleum operations is a priority land use. Pursuant to the PIA, upon the grant of a gas transportation pipeline licence by the Authority to a company, the company, as proponent of the natural gas pipeline, is entitled to an overriding right to access and construct the pipeline and ancillary facilities along the route proposed and approved for the pipeline. The Oil Pipelines Act 1956 (which is applicable to the extent not inconsistent with the PIA), empowers a licence holder 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 a pipeline and ancillary installations, subject to the payment of compensation for such use of land to the owner or occupier of the land. The Oil Pipelines Act 1956 further provides that where additional land outside the scope granted under a pipeline licence is required by a grantee, such land will need to be acquired from the land titleholder. The method for obtaining land rights for a natural gas distribution network is the same as that described above, subject to a gas distribution licence having been obtained by the company that proposes to construct or operate a natural gas distribution network.

Law stated - 10 January 2023

Access

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

The PIA permits third-party access to a gas transportation pipeline or a gas transportation network subject to the terms and conditions stated in the Nigerian Gas Transportation Network Code (Network Code). The Network Code sets out the terms and conditions for connection to, interconnection with, access and use of the gas transportation network. Access to facilities is granted without discrimination and based on availability of capacity in the facility. Where a gas transportation pipeline is isolated from the main gas transportation network, separate terms of access for the isolated gas transportation pipeline will be developed by the Authority.

The Network Code was launched by the federal government in August 2020 and initially applied to natural gas transportation pipelines owned by the Nigerian Gas Company Limited or its successor gas transportation company, the NGPTC. However, all gas transportation agreements are now required to migrate to the Network Code. The DPR, in its previous capacity as technical regulator of the oil and gas industry, established an electronic platform for processing applications for licences to use the pipeline, the Network Code Electronic Licensing and Administrative System (NCELAS), and 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 Network Code. It is not certain how much of the transportation charge will be based on the current US$0.8 per million standard cubic feet (MMScf) gas transportation tariff established further to the National Gas Supply and Pricing Regulations of 2008. Imbalances on the pipeline system are addressed in the Network 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.

Law stated - 10 January 2023

Interconnection and expansion

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.

Law stated - 10 January 2023

Processing

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 a regulated activity that is subject to a gas processing licence to be issued pursuant to the provisions of the PIA. The licence may only be granted to a qualified person after an economic case, and demand for its use is established by the regulator. To the extent that there is no conflict with the provisions of the PIA, the Petroleum Refining Regulations 1974 and the DPR Guidelines for the Establishment of a Natural Gas Plant Facility in Nigeria 2006, issued under the Petroleum Act, will also govern the process for the establishment and operation of gas-processing plants.

The approval of the Authority is required for the construction, operation and maintenance of a gas processing facility. Gas processing facilities are generally to be operated in accordance with international standards for refining, and the operator is required to submit a programme of activity to the Authority at the beginning of every year.

Law stated - 10 January 2023

Contracts

Describe the contractual regime for transportation and storage.

Natural gas producers using the natural gas transportation pipelines owned by the NGPTC, which are subject to the Network Code, are required to accede to a network framework agreement by which the terms and conditions of the Network 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 Network Code. These legacy agreements are recognised by the Network Code, and the NGPTC may, with the assent of the Authority, continue to provide such transportation services on the terms of the legacy agreement. All such arrangements outside of the Network Code are, however, required to be migrated to the Network Code.

Gas transportation agreements are typically entered into for the use of pipelines not subject to the Network Code. For instance, any person that proposes to use pipelines belonging to affiliates of upstream producers and holders of gas distribution franchises will enter into a gas transportation agreement with the pipeline owner or gas transportation pipeline licence holder. The PIA also mandates gas transportation pipeline licence holders to provide third-party party access to their pipelines on a non-discriminatory basis, which will require entry into gas transportation agreements with such third-party users.

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

Law stated - 10 January 2023

REGULATION OF NATURAL GAS DISTRIBUTION

Ownership

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 the 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 (NGPTC) – 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 NGPTC also grants franchises to private parties to develop gas distribution networks in franchise areas on a build, operate and transfer basis.

The Petroleum Industry Act 2021 (PIA), however, now provides that the development, operation and maintenance of a gas distribution network within a local distribution zone may only be undertaken further to a gas distribution license issued by the Authority. Consequently, the licencing framework created by the PIA may impact on the extant gas distribution franchising framework operated by the NGPTC.

Law stated - 10 January 2023

Regulatory framework

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 a licence issued by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) pursuant to the PIA, (in this case, a gas distribution licence) must be obtained from the Authority for the construction and operation of natural gas pipelines for purposes of gas distribution. Also, compensation must be paid to the owner of the land on which the gas pipelines and ancillary facilities are installed. Gas distribution utilities are subject to public service obligations to the extent that the Authority issues regulations imposing such obligations on licensees for matters such as the security of gas supply, maintenance of strategic stock, economic development, environmental protection, and health and safety.

Law stated - 10 January 2023

Access and pricing

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 current structure for gas distribution in Nigeria is a franchising arrangement between the NGPTC, the gas transportation subsidiary of the national oil company, the NNPC, and third-party franchisees selected by the NGPTC to undertake gas distribution in certain geographic areas. The franchise includes a tying arrangement whereby gas owned by the NGMC, a gas marketing affiliate of the NGPTC and another subsidiary of the NNPC, is sold by the local distribution company (LDC) to end-users at a discount to the price of an alternative or competing petroleum product. Under these gas distribution franchises, 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 the NGMC, the tariff payable to the NGPTC for gas transportation, and a marketing margin to the NGMC, plus a cost recovery charge by the LDC for the recovery of the capital expenditure invested in the development of the gas distribution infrastructure. The end-user price is subject to adjustment to reflect changes in the price of petroleum products.

Given the wide-ranging powers of commercial regulation granted to the Authority, including competition regulatory powers, it is not unlikely that the Authority will invade the franchise arrangements even more as the PIA requires that gas distribution is a licensed activity under the Act and mandates third-party access to a gas distribution network. Further, the PIA provides that the pricing for gas distribution services should not exceed the sum of the domestic base price that is determined by the Authority plus US$0.50 per million British thermal units. In addition, it stipulates certain principles applicable to the prices to be charged by midstream licence holders, such as gas distribution licence holders. This includes the requirement that prices should reflect disaggregated costs across segments of the natural gas supply chain (ie, the cost of wholesale gas supply as well as the tariffs payable for gas processing and transportation), ensuring a reasonable return for the licensee on its investment, and non-discrimination in services and charges by licence holders.

Law stated - 10 January 2023

System/service expansion and limitation

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.

Law stated - 10 January 2023

Contracts

Describe the contractual regime in relation to natural gas distribution.

Gas distribution in Nigeria is currently 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-user 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 (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 Network 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.

The holder of a gas distribution licence issued by the Authority pursuant to the PIA is expected to sell gas to wholesale and non-wholesale consumers within a gas distribution zone and may do so by entering into gas sale agreements with such consumers on a non-discriminatory basis.

Law stated - 10 January 2023

REGULATION OF NATURAL GAS SALES AND TRADING

Ownership and organisation

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 affiliated with gas producers. Most of the gas producers are unincorporated joint ventures between the Nigerian National Petroleum Corporation (NNPC), 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 on-sale 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-liquefied natural gas systems to underserved markets in Nigeria.

Prior to the enactment of the Petroleum Industry Act 2021 (PIA), the Gas Aggregation Company Nigeria Limited (GACN), established pursuant to the Nigerian Domestic Gas Supply and Pricing Regulations 2008, acted as an intermediary between upstream producers and wholesale gas offtakers, and ensured that upstream gas producers complied 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. The PIA provides for the incorporation of a domestic gas aggregator as a not-for-profit vehicle, which will undertake all of the functions previously carried out by the GACN, including the implementation of the domestic gas delivery obligations of gas producers.

Law stated - 10 January 2023

Government oversight

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?

Prior to the enactment of the PIA, holders of upstream oil mining leases with proven gas reserves were obligated to supply a portion of their gas to the domestic market through a process managed by the Gas Aggregation Company of Nigeria Limited, the domestic gas aggregator (the domestic gas supply obligation (DGSO)). The PIA and the Domestic Gas Delivery Obligation Regulations 2022 have tightened the supply obligation by requiring that such gas must be delivered by the producer to a location indicated in a gas purchase order issued by the domestic gas aggregator (the domestic gas delivery obligation (DGDO)), subject to limited exceptional circumstances stated in the PIA.

The PIA empowers the Commission to allocate DGDOs to gas producers annually before 1st March based on the annual domestic gas demand requirement determined by the Authority. The Authority is also responsible for regulating the price at which gas subject to the DGDO will be supplied. Gas volumes outside a producer's DGDO can be sold at market-based willing-seller-willing-buyer price.

In ensuring that the needs of the domestic market are met, the Commission may require producers of natural gas to carry out operations such as the drilling of new wells, completing and deepening existing wells or the construction of a gas transportation pipeline connected to existing pipeline or utilisation facility.

A penalty of US$3.50 per million British thermal units (which may be adjusted by the Commission by regulations issued under the PIA) is payable by a gas producer for failure to meet the DGDO allocated to such producer by the Commission. Also, any gas export project proposed by the natural gas producer will not be permitted by the Commission until it meets its DGDO.

Law stated - 10 January 2023

Trading processes

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

An offtaker that applies to, and obtains a gas purchase order from, the gas aggregator is entitled to negotiate a template gas supply and aggregation agreement (GSAA) issued by the aggregator with a gas producer that has been issued a DGDO by the Commission. The parties to the template GSAA are the gas producer, offtaker and GACN.

With respect to pricing, the gas producer is required by law to be paid an aggregate price that is a weighted average of all payments under similar GSAAs for the sale of DGDO volumes received by the GACN, or successor gas aggregator pursuant to the PIA, in an escrow account established for that purpose.

A gas producer that has satisfied its DGDO may contract with any offtaker for the sale of natural gas on a willing-seller-willing-buyer price basis.

Law stated - 10 January 2023

Available services and products

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 by law to purchase a bundled product. However, the NGMC, a wholly owned subsidiary of the NNPC, and franchisees granted rights to develop distribution pipelines 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.

Law stated - 10 January 2023

REGULATION OF LNG

Ownership and organisation

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

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

The 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 an engineering, procurement and construction contract for the development of train seven was 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.

Law stated - 10 January 2023

Regulatory framework

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. The Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) established by the Petroleum Industry Act (PIA) is empowered to issue a gas processing licence that would entitle the licence holder to construct and operate LNG facilities.

A gas transportation licence issued by the Authority will also be 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 include a bulk storage licence issued by the Authority for storage of LNG and the discharge of industrial waste. An export permit will also be necessary for the export of LNG.

Law stated - 10 January 2023

Pricing

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 the NLNG. However, the price of LNG produced for sale in the domestic market is not regulated. The PIA, however, stipulates certain principles regulating the prices to be charged by licence holders (eg, a gas processing licence holder), which includes such prices being reflective of disaggregated costs across segments of the natural gas supply chain (ie, the cost of wholesale gas supply as well as the tariffs payable for gas processing and transportation), being cost-reflective, ensuring a reasonable return for the licensee on its investment, and being non-discriminatory.

Law stated - 10 January 2023

MERGERS AND COMPETITION

Competition authorities

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 (FCCPA) have an overarching mandate to regulate anticompetitive or manipulative practices in any sector, including the natural gas sector. The Petroleum Industry Act 2021 (PIA) also gives the Nigerian Upstream Petroleum Regulatory Commission (the Commission) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) broad powers to regulate and punish anti-competitive behaviour by participants in the petroleum industry. The Authority is also empowered to enforce open access obligations as well as third-party access to midstream and downstream gas supply, processing, storage and transportation facilities.

Law stated - 10 January 2023

Competition standards

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 the existence of a monopoly that is adverse to the public interest.

The Authority is empowered by the PIA to determine anticompetitive conduct by ascertaining whether the conduct of a licensee has the purpose or effect of substantially lessening competition, may likely result in anticompetitive conduct such as an unlawful exercise of market power preventing customers from benefiting from a functional and competitive market, may cripple, exclude or deter the entry of another participant, or may be an abuse of dominant position in respect of the provision of any service.

Law stated - 10 January 2023

Enforcement

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 FCCPA may be liable to pay a fine as high as 10 per cent of its turnover in the preceding year.

The PIA empowers the Minister of Petroleum Resources, following a recommendation from the Commission, to take action such as the revocation of upstream licences where a licensee is engaged in practices contrary to the terms and conditions for the issuing of the licence or in the exercise of the supervisory power over the oil and gas sector. Where the Authority determines that a particular licenced activity is a monopoly service or there is insufficient competition in the market or a particular licensee is a dominant provider, it is empowered to regulate the prices charged in a manner consistent with the pricing principles in the PIA after having undertaken a consultation process with licensees, industry participants and other stakeholders. The Authority is also mandated to undertake periodic pricing methodology reviews.

In addition to the foregoing, where, in the opinion of the Authority, there is or maybe an abuse of market power, it is empowered to issue a cease and desist order, require and compel a licensee's disclosure of relevant information, undertake inquiries and investigations, and levy fines prescribed in regulations that do not exceed 5 per cent of the company’s turnover for the preceding year.

Law stated - 10 January 2023

Merger control

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 FCCPA requires that the FCCPC's approval is obtained for a merger resulting in a 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, the 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.

A midstream or downstream petroleum operations licensee is prohibited from merging with another licence holder or affiliate of a licence holder without the prior written consent of the Authority. The PIA also requires upstream producers that wish to participate in midstream or downstream petroleum operations to only do so through separate corporate vehicles. The Authority may also require a midstream or downstream operations licensee to only participate in another activity using a separate corporate vehicle.

Law stated - 10 January 2023

Price restrictions

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. Prices charged for midstream and downstream operations must, however, conform with the pricing principles stipulated in the PIA.

Law stated - 10 January 2023

Corporate governance regulations

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.

Law stated - 10 January 2023

INTERNATIONAL

Foreign participation

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

There are generally no special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector. However, in promoting local content for the development of marginally economic assets, the federal government of Nigeria may restrict upstream producers from transferring significant interests in their assets to foreign companies by the concession contract attached to the licences or leases granted by the Nigerian Upstream Petroleum Regulatory Commission.

Law stated - 10 January 2023

International agreements

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 the assent of, or execution by, the federal government.

Law stated - 10 January 2023

Cross-border sales and deliveries

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 a 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 Nigerian Midstream and Downstream Petroleum Regulatory Authority.

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 delivery obligations to the domestic market.

Law stated - 10 January 2023

TRANSACTIONS BETWEEN AFFILIATES

Restrictions

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, as well as with similar transfer pricing obligations and compliance with pricing principles in the Petroleum Industry Act 2021 (PIA), there are no restrictions on transactions between a natural gas utility and its affiliates.

Law stated - 10 January 2023

Enforcement

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. The Nigerian Midstream and Downstream Petroleum Regulatory Authority may serve a cease and desist order on a licensee where activities between such licensee and an affiliate are not undertaken on an arm's length basis or do not reflect the pricing principles in the PIA, and where the licensee fails to comply with the cease and desist order, may levy a fine not exceeding 5 per cent of the annual turnover of the licensee for the preceding year or revoke the licence granted to the licensee.

Law stated - 10 January 2023

UPDATE AND TRENDS

Gas sector-specific regulation

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

Significant changes to the regulation of the Nigerian gas sector have been made by the passage of the Petroleum Industry Act (PIA) in August 2021. The thoroughgoing provisions on gas in the PIA marks the first time that Nigeria’s abundant natural gas resources have been treated to such a level in legislation. These provisions address the regulation of activities relating to gas in the upstream, midstream and downstream segments of the petroleum chain. Importantly, the legislation addresses the licensing of activities, a competition regulatory framework, a gas transportation network code and a clear fiscal framework for gas.

Regulatory reform

The regulatory function of the erstwhile Department of Petroleum has been bifurcated as between two newly established technical and commercial regulatory agencies:

- the Nigerian Upstream Regulatory Commission (Commission), which regulates upstream petroleum operations including gas exploration and production; and
- the Nigerian Midstream and Downstream Petroleum Regulatory Authority (Authority), which regulates midstream and downstream petroleum operations such as gas supply, processing, storage, transportation and distribution.

Commercial reform

The PIA codifies and consolidates various legislation and regulations in the Nigerian natural gas sector such as the National Gas Supply and Pricing Policy 2007 and the Nigerian Domestic Gas Supply and Pricing Regulations 2008. The PIA also empowers the Commission and the Authority to regulate pricing in petroleum operations.

One of the key innovations of the PIA with respect to the natural gas sector is the creation of the Midstream and Downstream Gas Infrastructure Fund by the newly created Authority. The fund is expected to assist in the development of gas infrastructure, which has been a major challenge to economic development. It is to be funded from various sources including 0.5 per cent of the wholesale price of petroleum products and natural gas sold in Nigeria as is collected from wholesale customers.

Fiscal reform

The PIA, for the first time, gives some clarity to the fiscal regime for upstream gas production. The PIA introduces a hydrocarbon tax (HCT) as successor to the erstwhile applicable petroleum profits tax. The HCT is assessed as 30 per cent of profits for crude oil, condensates and natural gas liquids derived from associated gas and produced onshore or in shallow waters (less than 200m deep) in petroleum mining leases, and for crude oil production onshore or in shallow waters (less than 200m deep) in petroleum prospecting leases, 15 per cent of profits. The HCT does not, however, apply to:

- associated natural gas and non-associated natural gas; and
- condensates and natural gas liquids produced from non-associated gas fields, gas processing plants, and from associated gas at gas processing or other facilities downstream of the measurement point in a field.

In addition to the HCT, Companies Income Tax assessed at 30 per cent of the total profits of the preceding financial year, save for allowable deductions being payable for such production, is applicable to companies involved in upstream petroleum operations.

With respect to royalties, the PIA provides a 5 per cent royalty for gas production that is to be exported while it provides a 2.5 per cent royalty rate for gas to be utilised locally in Nigeria.

Energy Transition Plan

The federal government of Nigeria has recently launched the Energy Transition Plan (ETP), a strategy designed to address energy poverty and the climate change crisis. The ETP plans to decarbonise Nigeria's power sector through the expansion of generation capacity via renewable sources, primarily solar. The ETP also recognises natural gas as a key transition fuel on the path to net zero given Nigeria's abundant gas reserves. The strategy is for an initial ramp-up of gas generation prior to 2030 to facilitate the integration of renewable sources. Key to the ETP is the decarbonisation of cooking fuel sources by encouraging the move from traditional charcoal, firewood and kerosene and adoption of cleaner fuel sources such as liquefied petroleum gas prior to 2030, through intentional education and awareness campaigns. Given the importance of natural gas in Nigeria's energy transition, the ETP acknowledges the commercialisation of gas as a priority for the Nigerian government and has identified tax benefits and support schemes as crucial tools in encouraging investment in gas infrastructure.

With regard to the foregoing, Nigeria LNG Limited has committed all its liquefied petroleum gas production to the Nigerian domestic market and signed sale and purchase agreements with three local power companies for the annual delivery of 1.1 million tonnes of liquefied natural gas.

Nigerian Gas Flare Commercialisation Programme

The Nigerian government has relaunched the Nigerian Gas Flare Commercialisation Programme (NGFCP) designed to end the practice of gas flaring in Nigeria and stimulate economic growth. The NGFCP will offer flare gas for sale by the federal government of Nigeria through a transparent and competitive bidding process, and such gas will be used by the buyer as feedstock for commercially sustainable gas utilisation projects.

Law stated - 10 January 2023

Other regulatory developments of particular relevance to the gas sector

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

Pursuant to the PIA, the Commission has issued several regulations that are applicable to upstream gas producers, such as the:

- Domestic Gas Delivery Obligations Regulations;
- Petroleum Licensing Round Regulations;
- Conversion and Renewal (Licenses and Leases) Regulations;
- Petroleum Royalty Regulations; and
- Nigeria Upstream Petroleum Host Communities Development Regulations.

The Authority has also released several draft regulations for consultation with industry stakeholders covering midstream and downstream gas sector issues such as gas flaring, gas trading and settlement, gas processing and gas pipeline tariffs.

Law stated - 10 January 2023

Jurisdictions

Angola	Vieira de Almeida & Associados
Austria	Schima Mayer Starlinger
Brazil	Campos Mello Advogados
Colombia	Figueroa Sierra & Asociados Abogados
Denmark	Bech-Bruun
East Timor	Vieira de Almeida & Associados
Faroe Islands	Bech-Bruun
Germany	Luther Rechtsanwaltsgesellschaft
Greenland	Bech-Bruun
India	Clarus Law Associates
Iraq	Al Hadeel Al Hasan Law
Italy	CMS Italy
Mexico	Galicia Abogados SC
Mozambique	Vieira de Almeida & Associados
Nigeria	ENR Advisory
Norway	Kvale Advokatfirma
Poland	Banasik Woźniak i Wspólnicy Kancelaria Radców Prawnych Sp. P.
Thailand	Chandler MHM Limited
Turkey	Kesikli Law Firm
United Kingdom	Dentons
USA	Steptoe & Johnson LLP