

The International Comparative Legal Guide to:
Gas Regulation 2008

A practical insight to cross-border Gas Regulation work



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1 Overview of Natural Gas Sector

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

Algeria natural gas reserves represent nearly 3% of total world reserves and Algeria is the sixth producer country in the world. Algeria's proven natural gas reserves, the seventh largest in the world, amount to more than 4.5 trillion cubic meters, and represent more than 56% of its total hydrocarbon reserves. More than 60% of the gas is associated. The country holds one of the world's major natural gas fields at Hassi R'Mel, where one fourth of its dry gas is produced (40 million cubic meters per day). After the announcement, in 2003, of a major natural gas discovery in the Reggane basin, located in the south western part of the Saharan Platform, Algeria announced, in 2006, the discovery of another important natural gas reserve which is considered as the most important deposit in the Mediterranean region.

In 2006, Natural gas production reached 150 billion cubic meters including 25.4 billions cubic meters in partnership.

The country exported, in the same time, 37.8 billion cubic meters of gas and 38.7 million cubic meters of LNG (Liquefied natural gas). Algeria is considered as the fourth exporter of LNG and as the sixth producer of gas. By 2010, the country intends to export more than 85 billion cubic meters (Bcm) of gas (all types). No natural gas is imported.

Sonatrach, the national gas and oil giant and leading African company is the second LNG exporter worldwide, the third natural gas exporter, and the twelve energy company. According to Sonatrach, "With 17 discoveries made in 2006, gas discoveries revealed a volume of 44, 95 MTOE. Combined with the boosted capacity of the large Hassi R'Mel field, these discoveries further enhance the group's strong gas production and export capacity".

There are two major pipelines connecting the Algerian Mediterranean coast to Europe. The first, named "Transmed" or Enrico Mattei, connects Hassi R'mel to mainland Italy via Tunisia and Sicily. The second is called MEG, or "Pedro Duran Farell", and connects to Cordoba, Spain, via Morocco. These two pipelines have a combined export capacity of 34 Bcm. A third pipeline, "MEDGAZ", is currently under construction and should be finished

by December 2008. It will link Beni Saf in Algeria, directly to Spain and will have an initial capacity of 8 Bcm a year.

Two additional international pipeline projects are underway: the first concerns a Trans-Saharan pipeline, linking Nigeria to Europe via Niger and Algeria. The second is an additional pipeline between Algeria and Italy, via Sardinia.

Algeria mainly exports LNG from Arzew. It also exports LNG from Skikda and Algiers.

The sale of Algerian gas relies heavily on long term contracts, although some Algerian LNG can be found on spot markets.

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

In 2005, more than 36.3% of the energy consumed domestically was provided by natural gas, thus making it the country's largest source of energy. Algerian policy is to increase the use of natural gas as a source of domestic energy in order to see its use reach a level of 30 Bcm by 2010. In 2006, the domestic consumption of natural gas was around 23,740 million cm, which represents more than 50% of the global energy consumed domestically.

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

Domestic natural gas requirements are met through the country's own production.

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

Please refer to question 1.1 for more information on pipelines and LNG terminals.

2 Development of Natural Gas

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

Introductory note: Act N.05-07 of April 28, 2005 (hereinafter The

Act), which was mainly intended to liberalise the hydrocarbon market, is currently the cornerstone of the Algerian gas exploration and production regulation. The rules set out in The Act apply to all hydrocarbons, gas included. However, some of its content is specific to the Gas sector. The relevant specificities concern ALNAFT duties with regard to gas, gas sales contracts, and greenhouse gas emissions.

The Act was modified and completed by Ordinance N.06-10, 29 July 2006. The reform contains several important amendments. SONATRACH is granted an automatic 51% stake in all exploration and/or exploitation contracts (hereinafter “E/E contracts”). For refining and pipeline transportation, the said Ordinance limits the percentage of the foreign partner’s stake in these activities to a maximum of 49%. Moreover, and concerning these activities, the modified Act states that concessions can only be granted to Sonatrach. Other amendments pertain to the fiscal regime applied to contracts signed under the previous hydrocarbon act of 1986. In the main, the fiscal rules applied to foreign investors that have signed such contracts shall remain constant. However, the said investors shall be subject to two additional taxes.

Ownership: Under The Act, modified, hydrocarbon resources are the property of the State until they are extracted within the framework of an E/E contract. Once extracted, the said hydrocarbons become the property of the contracting entity. The State does not have any financial involvement and the new law leaves all liability of the State or of the National Agency for the development of hydrocarbon resources (hereinafter ALNAFT): the new Act stipulate “Under no circumstances, shall a direct or indirect link be established by a contracting party or any other party with ALNAFT or the State, nor shall any claim, direct or indirect, be made against ALNAFT or the State in connection with damages or consequences, of any kind, resulting from oil operation and/or their conduct.”

Institutional framework: Due to the liberalisation process, and in order to avoid a permanent conflict of interest, The Act provides that the State may recover a number of the prerogatives that were previously assumed by SONATRACH. These prerogatives are dispatched between two new agencies; namely:

- (i) The “Hydrocarbon Regulatory Authority” (hereinafter the Authority), which chiefly has a regulatory role and intervenes in transportation and downstream fields.
- (iii) The “National Agency for the development of hydrocarbon resources” (hereinafter ALNAFT) which is entrusted with very wide missions in respect of upstream activities. It is notably empowered to deliver prospecting authorisations. It is moreover entrusted to conduct calls for bids, and to evaluate bids pertaining to exploration and/or exploitation activities. It signs the E/E contracts.

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

Stricto sensu, the State’s mineral right to develop natural gas resources is ground on a mining title granted exclusively to ALNAFT. In order to undertake these activities, investors shall beforehand conclude an E/E contract with ALNAFT. The legal status of this type of contract is addressed in details below (please refer to question 2.3).

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

An investor wishing to undertake a gas development activity may require different forms of authorisations.

- **Environmental impact study:** The legislator specifies that before undertaking an activity falling within the ambit of The Act, an entity must first prepare an environmental impact study and submit it to the Authority for approval. The study shall encompass an environment management plan containing a description of preventive measures and environment risk management measures.
- **Prospecting authorisation:** A prospecting authorisation can be awarded by ALNAFT to an entity applying for a permission to conduct hydrocarbon prospective work. The duration of such an authorisation must not exceed two years. The authorisation does not provide the holder with an exclusive right to conduct prospecting activities.
- **E/E contract:** Generally, the contracting entity is selected through a call for bids. The E/E contract, as well as its amendments, shall be signed by ALNAFT and the investors. It must also be approved by a decree from the executive council.

The said contract provides the contracting entity with an exclusive right to explore and/or exploit within a certain perimeter. All hydrocarbons extracted within the framework of the contract become the property of the contracting entity, which shall then be subject to a royalty in accordance with the contractual terms and conditions.

E/E contracts provide for two successive phases:

1. Exploration phase: Generally, the maximum length of the exploration phase is 7 years. Under exceptional circumstances this period can be extended either by 6 months, 3 years or 5 years.
2. Exploitation phase: The exploitation phase cannot go over 25 years. However, in the case of dry gas deposits, the exploitation period is extended to 30 years.

Deposits that have already been discovered can be the object of a contract that only includes an exploitation phase.

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

At the outset, it is to be recalled that the Algerian State owns all the hydrocarbon substances and resources, discovered or not, that are located in the soil or the subsoil of the national territory.

In respect of extracted resources, the Algerian State does not, as such, seek to participate in the development of gas reserves. However it resorts to SONATRACH to do so. Indeed, the said firm is granted substantial rights by The Act, namely:

- All the E/E contracts shall contain a clause giving SONATRACH the option to take part in the exploitation of the discoveries. The contract shall specify the percentage of Sonatrach -SPA, in other word, a minimum of 51%.
- All the gas intended to be marketed abroad shall be subject to a joint marketing clause with SONATRACH.
- SONATRACH is also granted a special right in respect of total or partial transfer of E/E contracts (please see below question 2.8).

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

Beside the essential role devoted to SONATRACH in this regard (see above question 2.4) the State derives value from natural gas development through the tax framework set up by The Act. Exploration and/or exploitation operations shall or may be subject to the payment of the following taxes:

- Surface tax area.
- Royalty.
- Tax on oil revenues.
- Additional tax on performance.
- Tax on flaring.
- Property tax.
- Specific tax on water.
- Specific tax on the use, abandonment or transfer of greenhouse gas emission credits.
- Fee of 1% on the transfer of contract rights and obligations.

A specific transitory regime is applied to the contracts which were concluded between foreign investors and SONATRACH before The Act came into force. These contracts shall be replaced by “parallel contracts”, the content of which is very similar to the ones they replace. From a material standpoint the sole difference between the two is that SONATRACH no longer holds a mining title within the parallel contract framework. Also, from a fiscal standpoint, only SONATRACH is subject to The Act, the foreign partners remain subject to the previous legislation. However, the new Ordinance introduced a non-deductible tax on extraordinary profits on the foreign partners. The tax only applies to contracts concluded under Act N° 86-14. This tax shall be applicable to their share of the production when the monthly arithmetic average of Brent oil prices exceeds 30 dollars per barrel.

2.6 Are there any restrictions on the export of production?

We are not aware of any direct restrictions on the export of production. However, one can point out several provisions contained in The Act that are likely to have an indirect impact on the export:

- Article 50 of The Act provides that a national energy policy can lead to production limitations. The minister in charge of hydrocarbons is empowered to fix the level and duration of such limitations and ALNAFT is entrusted to allocate them equitably among producers.
- Article 51 pertains to the satisfaction of domestic gas needs. ALNAFT may ask each gas producer to contribute (in proportion to its own production) to the national requirements.
- As mentioned above (please refer to question 2.4), gas deposits intended to be marketed abroad are subject to a clause of joint marketing with SONATRACH.

From a more general standpoint, it is to be recalled that the considered reform of The Act (please refer to question 2.1) aims to protect the “right of future generations” on hydrocarbons resources. However the only restriction is the participation of Sonatrach to the contracts with a minimum of 51% (please see question 2.1).

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

Regarding transfer of funds, The Act draws a distinction between non-residents and residents.

- According to The Act, any entity with headquarters located beyond Algerian frontiers will be considered a non-resident. The entity’s subsidiary will be considered a non-resident only if the entity’s participation has been made available in convertible currencies.

The non-resident status provides investors with substantial advantages. According to Article 55 of The Act, the investor shall be authorised to:

1. Keep the proceeds derived from the exports of hydrocarbons abroad. The enjoyment of this right is, however, subject to a transfer of certain funds to the Bank of Algeria (please refer to question 2.9).
 2. Transfer overseas the profit obtained from domestic sales.
- Entities with headquarters located in Algeria are considered residents. Contrary to non-residents, residents shall repatriate and transfer to the Bank of Algeria the proceeds of their exports. Residents can however transfer their proceeds abroad under two circumstances, namely:
 1. When it has to pay the dividends it owes to its non-resident associates.
 2. When an overseas transfer is necessary to allow it to conduct its legally defined activity abroad. In this case, a resident must nevertheless obtain the consent of the Currency and Credit Council in order to transfer.

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

Under The Act, transfer of gas development rights may be limited.

According to Article 31 of The Act, the contracting entity may transfer all or part of its rights and duties in the contract. The entity must, however, comply with three conditions: (i) it must, beforehand, receive approval of ALNAFT; (ii) the transfer must be encompassed in an amendment to the initial contract, approved by governmental decree; and (iii) the transfer is subject to the payment of a non-deductible right equal to 1% of the transactional value.

In all cases, a transfer may be declined by the minister in charge of hydrocarbons if he deems it contrary to the public interest. Transfer may also be limited by SONATRACH’s right of first refusal which must be exercised within a period not exceeding 90 days following ALNAFT’s notification of transfer to SONATRACH.

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

An operator can be obliged to provide different kinds of guarantees in order to undertake its gas development activities.

- **Guarantee of good performance:** E/E contracts shall contain a clause specifying the minimum amount of works that the contracting entity commits to perform during each exploration period. This commitment must be backed by a bank guarantee covering the amount of the minimum works programme to be performed. The guarantee must be issued by a first-rate financial institution and approved by ALNAFT. It is payable upon request by ALNAFT.
- **Transfer of funds requirement:** Non-residents are generally free to keep or transfer their proceeds abroad. To do so, they must transfer to the Bank of Algeria the convertible currency which is necessary to cover development, exploration, exploitation and transport costs. The transfer shall comprise the necessary payment for royalties and due taxes.
- **Abandonment and/or restoration costs:** Be it in an E/E contract framework, or within a pipeline transportation

concession, the contracting entity must assume all the costs pertaining to abandonment and/or restoration works that could arise at the cessation of the contract. In order to cover these costs, reserve funds must be deposited on an escrow account during each calendar year.

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

This question seems to only address the pledge of the right to extract gas resources from the soil or the subsoil.

As explained above (please refer to question 2.1) such resources remain the property of the State as long as they have not been extracted. Therefore, investors shall be precluded from pledging the right at issue in this question.

We are not aware of a restriction on the possibility to book a right to develop natural gas reserves for accounting purposes. However the Algerian partner of the foreign investor may require to be informed of such a booking.

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

Decree 88-35 of 16 February 1988 sets out the rules applied to the authorisations needed to build hydrocarbon production and transportation facilities. Although it has been issued under the previous legislation, the said decree is still deemed enforceable in practice. Its application shall however comply with article 110 of The Act whereby a decision pertaining to the required authorisations shall be issued within ninety days following a regular demand.

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

At the expiration of the E/E contract or of the transport concession, the ownership of all the facilities necessary to conduct the related activities shall be transferred to the State. At the time of transfer, the infrastructure must be operational and in a good working condition.

If the State refuses to assume the ownership of the facilities, the contracting entity will be held liable for all abandonment and/or restoration costs provided for in the contract, and imposed by industrial and environmental safety regulations.

Please refer to question 2.9 for more information on the reserve funds intended to cover abandonment and/or restoration expenses.

3 Importation / Exportation

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

There is no specific rule aiming at quantitatively restricting imports or exports. However, as mentioned in the previous section (please refer to question 2.6) exports may be indirectly restricted by different provisions contained in The Act.

From a general standpoint, one must bear in mind that Algeria has signed an Association Agreement with the European Union, which entered into force on September 1st 2005. The said agreement has repealed and replaced the Cooperation Agreement of 1978. Both of these agreements aim at progressively eliminating restrictions on imports or exports and at ultimately setting forth a free trade area between the signatory parties.

The provisions pertaining to the free movement of goods have a direct effect, meaning that they can be invoked before a court. Such provisions can thus be used as an efficient tool to tackle measures that hinder commerce between Algeria and the European Union. A pending case before the European Court of Justice (hereinafter ECJ) provides a good instance of the impact of these rules in the gas sector. Indeed, the European Commission, as the guardian of the Treaties founding the European Union, has recently filed a suit before the ECJ to seek the annulment of an Italian tax which limits Algerian gas exports by charging pipeline transport. The European Commission notably claims that the tax at issue infringes the provisions pertaining to the free movement of goods contained in the Cooperation Agreement.

4 Transportation

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

The liberalisation of the gas sector implies an open access to transportation, refining and storage facilities. Therefore, The Act contains certain provisions addressing these essential issues. The legal framework ruling transportation activities also stems from Act 02-01 that only addresses gas intended to be traded on the domestic market.

- Transportation: As mentioned above, a distinction is to be drawn between the transportation network supplying domestic needs (1) and other transport facilities (2):

1. Under Act 02-01 of 5 February 2002, the gas transport network supplying the national market is a natural monopoly managed by GRTG SPA, the subsidiary of the State owned company, SONELGAZ. Distributors shall be granted an access to the said network on the ground of a Third Party Access right (hereinafter TPA) which will be addressed in further details below (please refer to question 4.6).

2. In respect of transportation facilities that are not intended to supply national demand, the rules provided for by The Act are quite different. In accordance with the new law modified, all the firms that have been granted a concession can undertake the construction and the operation of a transportation network. The said deed is provided on order of the minister in charge of hydrocarbons for fifty years. With the exception of an act of God, the holder cannot suspend operations.

Other than concession holders, firms can have an access to transportation facilities on the ground of a TPA right. The regime of this right is addressed below (please refer to question 4.6).

- Refining: An authorisation is normally required to build facilities relating to these activities.

- Storage: The rules regarding storage facilities are roughly the same as those pertaining to transportation. An authorisation is required to build infrastructures relating to these activities. Firms that have not been granted such an authorisation can be provided an access to storage facilities on the basis of a TPA right.

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

Decree 88-35 sets out the rules applied to the authorisations required to build hydrocarbon production and transportation facilities. Please refer to question 2.11 for more information on this decree.

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

The holder of a pipeline transportation concession may benefit from the following rights:

- to acquire land;
- to acquire a right to use the maritime domain; and
- to expropriate.

The fees inherent to the authorisation procedure shall be borne by the concession holder.

Only SONELGAZ can request the deeds required to build the transportation network used to meet domestic needs.

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

The Act guarantees TPA rights to the existing pipeline network. However, this access will only be approved upon payment of an equitable tariff. The Authority is in charge of equalising access tariffs via a special fund.

In application of Act 02-01, distributors are also granted a TPA right to the network used to transport gas intended to be traded on the domestic market. The Electricity and Gas Regulation Commission (hereinafter the Commission) is empowered to set the tariff that distributors are to pay in exchange of TPA.

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

Most of the gas pipelines originate from Hassi R'mel, the largest gas field of Algeria (please refer to question 1.1 for more information on export pipelines). The Transmed and MEG pipelines are not interconnected.

Under Act 02-01, the gas transport network for the national market is a natural monopoly managed by SONELGAZ. Therefore, there are no issues concerning interconnection to other transportation networks.

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

As mentioned above (please refer to question 4.1), firms that have not been awarded pipeline transportation concessions or authorisations to

build storage infrastructure can be provided a TPA right.

However, it must be stressed that in the absence of regulations giving more details on the TPA, the content of the said right is still unclear. Indeed, The Act only provides elusive indications in this respect, namely:

- TPA rights shall be subject to the payment of non-discriminatory "per zone" tariffs.
- The standard used to determine the pipeline transportation tariffs must coincide with the following objectives which are to:
 1. offer the lowest possible tariff to users without jeopardising the continuity of service;
 2. improve operational efficiency;
 3. reduce operational costs; and
 4. enable the concession holder to cover operational cost, pay the fees and taxes it owes, amortise investment and financial charges, and earn a reasonable profit.
- The Authority will have jurisdiction to ensure that regulations pertaining to TPA are complied with.

The TPA regime organised by Act 02-01 is very similar to the one described above:

- The right is subject to the payment of a transparent and non-discriminatory tariff set by the Commission.
- The tariff shall cover all the costs that the transportation operator had to incur in order to carry out its activity.
- TPA shall be refused only in case of a proven lack of capacity.
- The operator can bring an action before the Commission in the event where a TPA is refused.

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

As mentioned above (please refer to question 4.6), price upon which gas is transported shall be regulated.

The others terms of the gas transportation contract are not dealt with by The Act.

5 Transmission / Distribution

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

According to Act 02-01, only firms that have been granted a concession may build and operate a distribution network. The concession holder, selected after a call for bids, becomes the owner of the facilities.

A concession was granted to all SONELGAZ subsidiaries involved in distribution activities prior to entry into force of Act 02-01.

Concession holders are subject to the public service obligations defined by Act 02-01.

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

Applicants for a concession shall comply with all relevant environmental and technical legislation and must hold all authorisations resulting thereof.

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

Access to the natural gas distribution network can be requested on the basis of a TPA right provided for by Act 02-01. The regime of this TPA is similar to the one regulating access to the network intended to satisfy domestic needs (please refer to question 4.6).

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

The concession holder must comply with all the technical requirements defined in the contract. These requirements can include the development of distribution networks.

Aside from these duties, there is no specific provision allowing the regulator to request an expansion of the distributor's network.

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

The access to the distribution network is regulated by Act 02-01. The Commission is in charge of setting a tariff which will be based on the principles of transparency and non discrimination. According to Act 02-01, such tariffs shall cover all investment costs and allow for a reasonable profit.

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

According to article 168 of Act 02-01, any entity can take a stake in the capital of GRTG SPA (please refer to question 4.1). However, SONEGAS shall remain the major stakeholder of GRTG SPA.

The concession cannot be transferred.

6 Natural Gas Trading

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

The price of gas intended to fulfil the domestic needs is strictly regulated. This is due to the fact that the gas supplying activity is considered a public service. Only holders of authorisations can undertake gas trading activities. The manager of the domestic transport network cannot buy or sell gas.

In respect of gas intended to be traded abroad, The Act only requires that the sale contract be transferred to ALNAFT in order to enable it to fix the benchmark price. The Act also provides that the gas sale contract shall contain mandatory information, notably the name of the buyer, the total quantity of gas sold, and the duration of the contract or the price.

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

We are not aware of such restrictions.

7 Liquefied Natural Gas

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

The four existing LNG facilities (Arzew and Skikda) are currently owned by Sonatrach. There is no remarkable regulatory framework relating to LNG facilities. However, article 77 of The Act allows authorised entities to undertake "refining and transformation activities", and The Act provides that gas liquefaction is a form of hydrocarbon "transformation".

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

The Act states that authorisations will be granted according to rules set forth in a governmental regulation which has yet to be issued.

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

We are not aware of any LNG specific price regulation or terms of service. Please refer to question 6.1 for more information on general gas pricing regulation.

8 Competition

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

Algerian competition rules are contained in Ordinance 03-03 repealing Ordinance 96-05. According to the Ordinance 03-03 the "Conseil de la concurrence" (Competition Authority) has jurisdiction over competition matters.

The Authority normally has jurisdiction over TPA issues. However, it is noteworthy that such issues may fall within the ambit of the competition rules over which the "Conseil de la concurrence" has jurisdiction. Competition law is relatively new to Algeria, and its application is needed in order to clarify the roles of the above-mentioned entities with respect to the natural gas sector.

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

Under Algerian competition law, which is derived from European competition law, the following practices are regarded as anti-competitive and thus forbidden:

- Agreements or concerted practices.
- Abuse of a dominant position.
- Abuse of an economic dependence.
- Predatory pricing (prix abusivement bas).

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

The "Conseil de la concurrence" may upon request or on its own initiative:

- Take decisions bringing an end to the anti-competitive practice.

- Order interim measures.
- Impose fines.
- Impose the publication of a decision extract.

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

The “Conseil de la concurrence” is empowered to assess whether a merger is likely to affect competition. It can preclude an operation that may have as an effect to reinforce the dominant position of a firm. The “Conseil de la concurrence” has to take its decision within a three-month period following a notification. Such a decision can be subject to appeal before the “Conseil d’Etat” (Algeria’s supreme administrative jurisdiction).

One has to underline that for the sake of general interest, the Government can authorise an operation that has been refused by the “Conseil de la concurrence”.

Moreover, the takeover of an electricity producer by a gas transporter, distributor or trader shall always be subject to the prior approval of the Commission.

9 Foreign Investment and International Obligations

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

There is no specific limitation on acquisition of interest in the gas sector by foreign firms.

However, the rights granted to SONATRACH in which it is not a stakeholder (please refer to questions 2.4 and 4.1) and relating to the transfer of contracts (please refer to question 2.8), may affect all firms whether foreign or domestic.

Furthermore, Act 02-01 provides that the Algerian State shall remain the main stakeholder of SONELGAZ SPA.

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

The Association agreement signed between Algeria and the European Union, which aims to set forth a free trade area, may very well influence the regulatory policy applied to the gas sector. Moreover, owing to the fact that European countries are the main purchasers of Algerian gas, the EU internal market gas rules may affect the Algerian gas sector. These rules mainly stem from Directive 2003/55/EC on “Common rules for the internal market in natural gas” and from Directive 2004/67/EC concerning “measures to safeguard security of natural gas supply”.

Algeria has also signed and ratified the Kyoto protocol that entered into force on the 16th February 2006.

10 Dispute Resolution

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

In Algeria, the possibility to resort to international commercial arbitration stems from article 458 bis of the Civil Procedure Code. Only disputes involving at least one firm headquartered abroad may be the object of an international commercial arbitration. Concerning the gas sector, this option is subject to some additional provisions set forth by The Act.

Indeed, any dispute opposing ALNAFT and a contracting entity and relating to the interpretation and/or the performance of a contract shall be subject to conciliation under the conditions agreed to in the contract. The dispute may be submitted to international arbitration only if the conciliation fails.

Notwithstanding the aforementioned provisions, if a contracting entity fails to meet its regulatory or contractual duties, the contract can be cancelled 30 days after a formal notification is considered unsuccessful.

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

Algeria signed the Convention on the Recognition and Enforcement of Foreign Arbitral Awards on February 7th 1989. The Convention on the Settlement of Investment Disputes between States and National of Others States entered into force on March 22nd 1996.

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

As mentioned above (please refer to question 10.1), only disputes involving at least one foreign firm can be subject to international commercial arbitration. This condition is not fulfilled when an investor decides, or is required, to incorporate in Algeria.

Under domestic law, public entities are not granted a jurisdictional immunity.

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

We are not aware of any gas relevant dispute between a foreign corporation and a State organ brought before a domestic court.

However, numerous disputes relating to the gas sector and involving State organs have been ruled by the ICC.

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Amine Ghellal, the founding partner of Ghellal & Mekerba, has 35 years of experience in the hydrocarbon sector. He is currently considered one of Africa's leading gas and oil practitioners and regularly advises major international firms on all the intricacies of energy regulation. Dr. Ghellal has counseled the Algerian Ministry of Energy and has also headed Sonatrach's "International Legal" and "International Negotiation" departments. Between 1979 and 1981, he was Algeria's legal expert within the OPEC and the OPAEC. Dr. Ghellal's practice also includes law relating to investment and international commerce, project finance, banking law, exchange control regulation, tax and customs law, telecommunications, joint ventures, mergers and acquisitions and international commercial arbitration. He is an advocate at the Supreme Court and at the State Council of Algeria and an experienced Arbitrator (ICC and ad-hoc). Dr. Ghellal is a graduate in both law and political science. He obtained his PhD in France, with Summa cum laude and praises of the examination board. He also taught public law, both in France and Algeria, for many years, and has published many articles. Dr. Ghellal is a member of the Algerian Bar Association, a member of the International Arbitration Institute (IAI), a correspondent of the World Bank in Algeria, an honored Member of the International Who's Who of Professionals., a member of the International Lawyers Club (Head Office in France), and a member of the International Lawyers Association "Mackrell International" (Head Office in Great Britain).

Over the last two decades, Ghellal & Mekerba has been the trusted legal advisor of most prominent foreign and national corporations operating in Algeria. Ghellal & Mekerba's constant efforts to achieve outstanding performance have allowed it to substantiate its status as Algeria's leading law firm (Martindale Hubbell, Legal 500, Practical Law...).

Ghellal & Mekerba's team is truly international and comprises Algerian, European and American members. Its fifteen dedicated attorneys, some of whom have more than thirty years of experience, provide the know-how needed to guide their clients towards the complete success of a business venture.

Several of the firm's attorneys have significant corporate experience at high-level posts. This particular feature has allowed Ghellal & Mekerba to build an extensive professional network and has ensured its thorough understanding of the Algerian and North African business environment.

All the firm's lawyers are at least bilingual and work in French, Arabic, English, Spanish or German.

Ghellal & Mekerba's key practice areas include but are not limited to: hydrocarbon and mining law, investment and privatisation law, corporate law, commercial law, telecommunications law, national and European antitrust law, intellectual property law; construction law, project finance and PPP, corporate finance, and international commercial arbitration.