

# Bird & Bird & Energy networks

*Bird & Bird's international energy and utilities team has significant experience of advising on energy network issues. Including well-known former regulators, and the authors of several well-received books and articles, the team's leading experts are regularly asked to speak at influential European conferences and events. Members of the team have advised major global energy companies - both network operators (including many individual TSOs as well as ETSO and ENTSO-E) and users, as well as governments and regulators. This broad perspective gives the team a pragmatic approach that adds real value to the projects on which it works.*

## Energy networks play a pivotal role in the global economy

The European Commission places networks at the heart of its policy of developing competitive, sustainable and secure energy markets. According to the Commission, €200 billion must be invested in energy networks by 2020 in order to achieve this objective. However, following its sector inquiry, the Commission concluded that in a number of cases, networks and markets were inadequately liberalised, inefficient and/or controlled by those with an interest in preventing the emergence of competitive access. In order to remedy these deficiencies, the third EU energy liberalisation package required the full unbundling of transmission from production and supply activities, and the development of EU network codes to create integrated EU energy networks and markets. Constantly fluctuating supply and demand, the need to integrate increasing quantities of renewable energy and the inability to store electricity all add further levels of complexity to this mix. The same physical factors also mean that commercial agreements in the sector are particularly complex.

## Practical implications

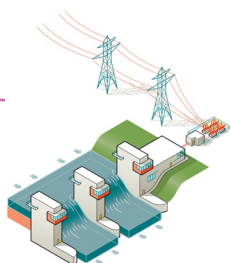
Advice in this area requires an in-depth understanding of the technical characteristics of energy networks and markets, detailed knowledge of EU policy and regulatory principles and an appreciation of the national context within which regulation is primarily enforced. Bird & Bird's team, with its practical experience across the entire sector, provides valuable assistance to energy companies on all of these key issues.

## How we can help

The experience of the members of our international energy team ranges from market design at the macro level, to advice on the detail of law, regulation and practice in a very large number of specific projects at the other end of the scale.

We advise on the complete range of energy network-related issues, including:

- Energy market design
- Liberalisation and unbundling
- National and EU network codes
- Gas balancing regimes
- Network restrictions
- Tariffs and price controls
- Interconnectors
- Offshore networks
- Private networks
- Smart grids
- Proposed legislation
- Consenting and environmental
- Commercial and connection agreements
- Administrative law/judicial review
- Dispute resolution
- Competition investigations
- Competition damages claims
- Mergers and acquisitions



## Case studies

The great depth and breadth of industry knowledge and expertise of the lawyers in our team are illustrated by the range of projects on which they have worked over the past few years, which include advising:

### Energy market design

The GB energy regulator **Ofgem** on the development, drafting and introduction of the British Electricity Trading and Transmission Arrangements (BETTA) and the associated changes to key network and market codes, as well as various related statutory and other legal implications. This experience of advising on the development and introduction of an entire market structure gives our team an unusual in-depth insight into the interaction of the various component parts of an energy market and regulatory regime.

### Liberalisation and unbundling

The Northern Ireland electricity transmission system operator, **SONI**, on the unbundling requirements of the third EU energy liberalisation package, including advising on the effect of relevant EU and NI legislation, licence conditions and agreements, and preparing submissions to the regulator and energy ministry.

### National and EU network codes

**EirGrid** on the entire range of regulatory requirements under EU and UK law, and in particular under the GB Grid Code, CUSC, BSC and associated documents, for the East-West interconnector between Ireland and the UK. This work reflects our detailed understanding of the codes that underpin energy networks across Europe. We have also advised on the development and legal status of EU-wide network codes under Regulations 714/2009 and 715/2009.

### Gas balancing regimes

**GasTerra** on its challenge to the Netherlands gas balancing regime.

### Network restrictions

A number of electricity TSOs on the application of Regulations 1228/2003 and 714/2009 and the annexed congestion management guidelines to the curtailment of capacity on interconnectors, including advising on the extent of the TSOs' duty to offer connection, their ability to limit the capacity offered and the grounds on which they are permitted to restrict capacity once connected, in order to manage internal transmission constraints or on system security grounds. Our advice in this important and technical area permits TSOs to operate their networks flexibly, efficiently and safely, in compliance with the relevant rules.

### Tariffs and price controls

The gas shipper members of **EnergieNed**, including **GasTerra** and **Nuon**, in their successful appeal against the tariffs and conditions of the Dutch gas TSO, set by the Minister of Economic Affairs and the **Energiekamer**, the Dutch energy regulator. This resulted in a landmark decision of the Supreme Administrative Court in favour of **EnergieNed**, requiring the adjustment of all tariffs over the previous four years and a very substantial refund to the shippers.

### Offshore networks

**TenneT Offshore** (purchaser of the former E.ON offshore transmission network) on the connection of all of the offshore windfarms in the German North Sea to the onshore transmission system, involving 10 major offshore transmission system procurement contracts since 2007.

### Interconnectors

The joint venture company, **Nord Stream**, and its sponsors, on the German and EU regulatory issues raised by the two 1,220 km subsea gas pipelines linking Russia and the European Union via the Baltic Sea, in conjunction with the €7.5 billion project financing of the pipeline, and a **German gas pipeline operator and a major transit gas pipeline operator** on the possible exemption of new gas infrastructure from relevant national and EU obligations, under Article 22 of Directive 2003/55 and Section 28a of the German Energy Industry Act.

### Private networks

**Nuon** on a wide range of issues relating to the operation of its private networks, and in particular the exemption from the requirement to appoint a separate grid operator.

### Smart grids

The **Energy Market Authority of Singapore** on a project to develop an intelligent micro-grid infrastructure on Pulau Ubin to supply electricity using clean and renewable energy resources and to facilitate test-bedding of close-to-market clean and renewable energy technologies. The pioneer project seeks to provide a test-bed for an intelligent micro-grid infrastructure with distributed generation from clean and renewable energy resources and to build local capabilities in the area of smart grid design, system integration and the management of intermittent renewable energy sources, which can be incorporated into subsequent upgrades of Singapore's main transmission grid.

### Proposed legislation

An **electricity TSO** on the process for the adoption of German legislation on electromagnetic fields, and on its representations to the relevant authorities with a view to informing the process.

### Consenting and environmental

An **electricity TSO** on consenting procedures and in proceedings brought by a municipality and a number of individuals before the Federal Administrative Court, challenging the development of a 380kV transmission line.

### Commercial and connection agreements

A very wide range of **grid operators, grid users and other parties** on agreements to develop, connect, operate, maintain and use transmission and distribution networks in numerous countries across Europe.

### Administrative law/judicial review

A number of **Spanish and foreign energy companies** and investors in a series of disputes relating to the retroactive effect of the feed-in tariff regulations for solar photovoltaic plants, adopted under Royal Decrees 1565/2010 and 1003/2010, and Royal Decree-Law 14/2010, including the first arbitration claim against the Spanish government under the Energy Charter Treaty, administrative law claims against the legislation and the first claim against the Spanish government before the European Court of Human Rights for breach of the European Convention on Human Rights.

## Dispute resolution

RWE npower on a dispute with National Grid arising from a defective substation upgrade that resulted in a short-circuit, causing significant damage to a generating unit at Littlebrook power station. The dispute focuses on the allocation of liability for different types of loss under the GB Connection and Use of System Code and related bilateral agreements, requiring a thorough understanding of the regulatory and contractual framework.

## Competition investigations

SSE, one of the major GB integrated energy companies, on an investigation by Ofgem, which has competition enforcement powers in the energy sector, into an alleged abuse of a dominant position in generation markets in GB during periods of transmission constraints. The alleged abuse consisted of submitting physical notifications (to run or withhold generation) that were not economically justified and then charging excessively high prices to National Grid to reverse the notified position through bids and offers in the

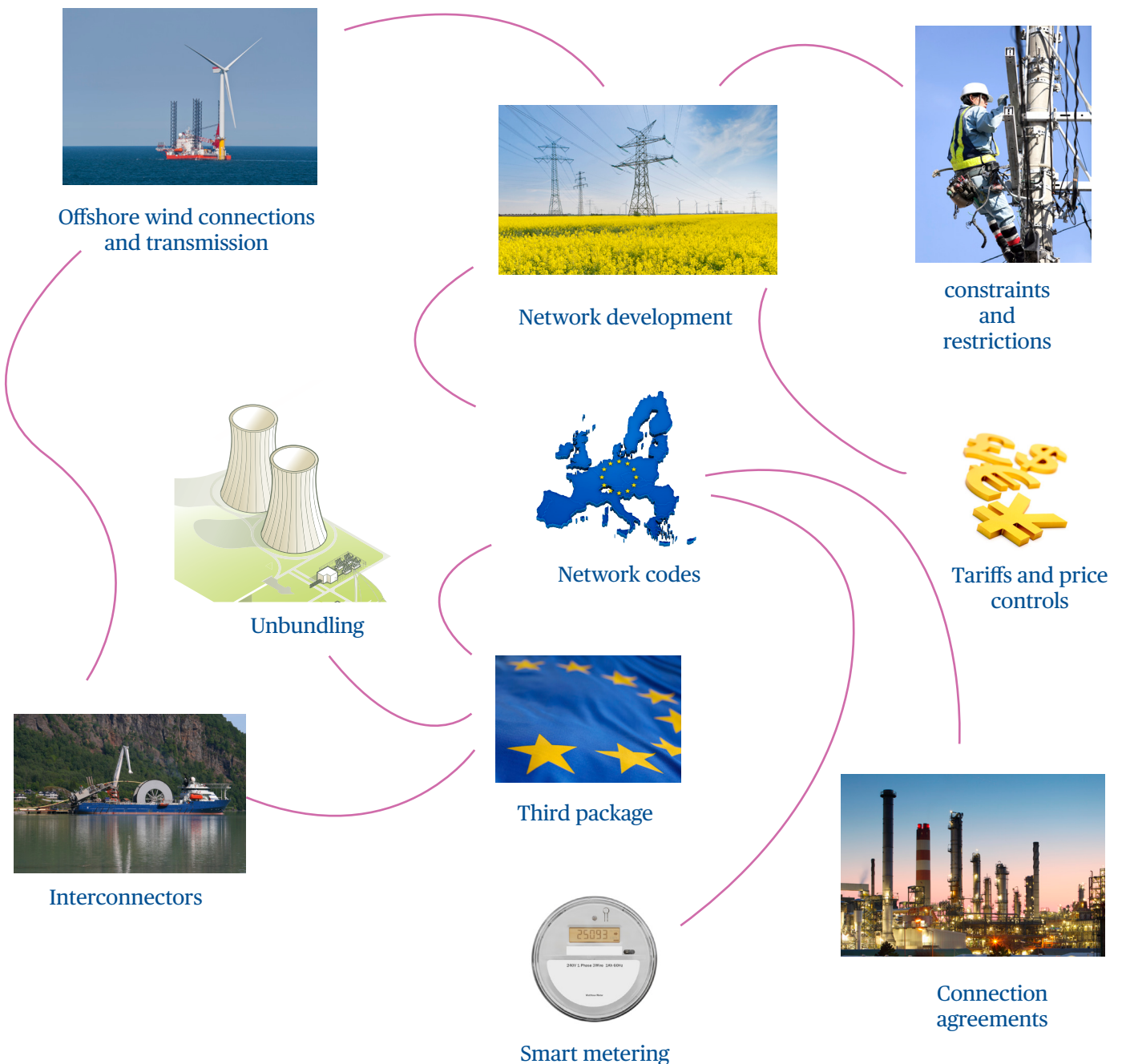
Balancing Mechanism. A detailed understanding of the BM, ancillary services and transmission constraints, and of the application of competition law principles to energy markets, resulted in the submission of a detailed submission that convinced Ofgem that, although it had serious concerns about the conduct concerned, it was unlikely to be able to make a finding of infringement.

## Competition damages claims

UK Power Networks, the operator of the largest GB electricity distribution network, on its damages claim before the High Court against members of the *Gas-insulated switchgear* cartel, fined €750 million in 2007 for rigging bids, fixing prices and sharing markets between 1988 and 2004.

## Mergers and acquisitions

Vattenfall Europe in its auction process for the sale of its German electricity transmission system operator 50Hertz to the Belgian TSO Elia and the Australian fund IFM.



## Did you know that Bird & Bird

- Has been involved in all of the offshore wind farm projects in the German North Sea?
- Includes as members of its team many of the most experienced and respected figures in the energy sector in Europe, including the former Vice-President of the Bundesnetzagentur and of the Council of European Energy Regulators?
- Includes a number of leading published industry experts who regularly contribute to, and influence, the wider debate - as co-editors of 'Renewables: A Practical Handbook', as author of the electricity chapter in Butterworth's Competition Law Service, as author/publisher of the germanenergyblog.de or as speakers at major industry conferences and events?
- Has advised the Electricity Market Authority of Singapore for over 10 years on issues such as the implementation of contestability in the Singapore electricity market, and modification of the Transmission Code?
- Has over 80 lawyers across our offices who advise on energy and utilities matters?
- Is renowned for its innovative solutions to the world's most technologically advanced companies, helping them to realise their business goals?

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