
THE ENERGY REGULATION AND MARKETS REVIEW

EDITOR
DAVID L SCHWARTZ

LAW BUSINESS RESEARCH

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THE ENERGY
REGULATION
AND MARKETS
REVIEW

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DAVID L SCHWARTZ

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EDITOR'S PREFACE

Safe and reliable delivery of electricity and natural gas has been the hallmark of energy policy and regulation in the industrialised world for the past 75 years. More recently, regulators, policymakers and the industry began to focus their attention on ways to improve economic efficiency, increase productivity and reduce costs through a seemingly endless series of reforms.

In some countries, utilities were encouraged to enhance transmission and interconnection facilities with neighbouring systems in order to pool energy resources. More recently, utilities have been encouraged to participate in regional organisations to buy and sell power, and to administer transmission, dispatch and scheduling of a variety of energy products. Certain countries have encouraged utility efficiency through a variety of performance-based incentives.

Policymakers have tried to reduce the barriers to entry by requiring non-discriminatory treatment among transmission users, and prohibiting affiliate abuse. Utilities were encouraged to unbundle certain utility services; in some cases, regulators required the divestiture of generation or transmission facilities. Utilities have even been encouraged to provide retail wheeling services to facilitate competition for delivery service customers.

Many markets have developed competitive bid-based electricity auctions to set energy and capacity prices, which often take into consideration the cost of transmission congestion. These markets tend to be administered by independent or governmental entities that do not have a market position bias. Clearing prices set in these markets are intended to send price signals to maximise short-term efficiency (scheduling, dispatching and selling energy), as well as long-term efficiency (building new or retiring old generation and transmission facilities).

In certain countries, lawmakers and policymakers have encouraged developers to build and finance new renewable resources and to develop more effective means of conserving energy, through a variety of 'carrots' and 'sticks'. These measures have included subsidies such as feed-in tariffs and renewable energy credits, as well as utility

requirements through renewable portfolio standards. In certain competitive markets, conserving electricity has been converted into a demand-side product ('negawatts') with near or equal value to supply-side generation (megawatts). New 'smartgrid' technologies have been created to increase the efficiency of transmission, generation, distribution and individual consumers' energy use.

Now, however, the myriad of efficiency mechanisms faces new and unprecedented challenges. Transmission and distribution systems are ageing and desperately need upgrading. Severe new environmental requirements are leading to mass retirements of baseload coal-generation resources. Fuel prices are volatile, adding long-term uncertainty to energy prices. Spikes in the price of raw materials are making the development of new infrastructure all the more expensive. Cyber-security threats are exposing the vulnerabilities of our energy networks. And the global economy continues to threaten our ability to obtain the necessary credit to build and finance energy infrastructure.

This is the sobering backdrop for this inaugural edition of *The Energy Regulation and Markets Review*. I would like to thank all of the authors for their thoughtful consideration of these difficult challenges. As can be seen in these chapters, we have much to consider and resolve before we can achieve the kinds of energy security and efficiency that we have been pursuing.

David L Schwartz

Latham & Watkins LLP

Washington, DC

June 2012

Chapter 12

ITALY

*Simone Monesi*¹

I OVERVIEW

Italian gross consumption of electricity in 2010 was 346,223GWh, of which 12.9 per cent was imported.² The market demanded an average of 39.5GW of gross power (ranging from an average minimum of 22GW during night-time hours to 52GW during daytime hours). The historical spot peak power demand was recorded in 2007 (in coincidence with the peak of the economic cycle) equal to 56.82GW.

The aggregate maximum net installed capacity as at 31 December 2010 was 106,938MW.

In 2010 the main generation market players were ENEL (27.9 per cent of net generation), Edison (11 per cent) ENI (10 per cent) E.On (5.7 per cent) and Edipower (5.5 per cent).

In 2010 67.2 per cent of the demand was met by conventional power plants burning fossil fuels imported to a very large extent from abroad; 20.6 per cent of the demand came from renewable sources (hydro, geothermal, wind and photovoltaic ('PV')) and the balance through electricity imports.

The nuclear programme that contemplated the building of eight new nuclear power plants was abandoned in 2011 in consequence of a popular vote in the aftermath of the Fukushima accident.

Natural gas accounted for 66.2 per cent of the total conventional fuel mix, coal for 17.2 per cent and oil products for 4.3 per cent. Other fuels (including biomass, waste and orimulsion) accounted for the balance. A massive shift towards natural gas has occurred only in recent years (in 1994 oil fuels accounted for 94 per cent of the fuel mix).

1 Simone Monesi is a partner at Latham & Watkins LLP.

2 Terna, 'Statistical Data on electricity in Italy, Synthesis 2010', English version available at www.terna.it/LinkClick.aspx?fileticket=2KFIU95%2bXTw%3d&tabid=811.

Italy is the fourth importer of natural gas in the world, such imports being sourced mostly from Algeria and Russia (and to a much lower extent from Libya, the Netherlands, Qatar and Norway).

Transportation of gas take place through five pipelines connecting the Italian gas transportation network with the Netherlands, Algeria, Russia, Libya and Norway, and two regasifiers located in Panigaglia and Porto Tolle. Projects for the construction of further five regasifiers have been approved (while one was recently abandoned by British Gas in Brindisi) but are facing considerable local opposition. Seven additional projects are being considered.

The high-voltage ('HV') and ultra-high-voltage ('UHV') electricity transmission grid is mostly owned and operated under a concession regime by Terna SpA, a publicly listed company in which Cassa Depositi e Prestiti SpA (the Italian state investment arm) holds a 29.85 relative majority stake. Terna is also responsible for dispatch.

The medium-voltage ('MV') and low-voltage ('LV') distribution grid is operated by 144 (in 2010) distribution service operators ('DSOs') under a concession regime. In 2010 Enel Distribuzione SpA accounted for 86.3 per cent of volume distributed, followed by A2A Reti Elettriche (4.0 per cent), Acea Distribuzione (3.4 per cent) and Aem Torino Distribuzione (1.3 per cent). All other DSOs have marginal market shares.³

The national and regional gas transportation grid is managed under a concession regime by 10 participants, the most important being SNAM Rete Gas, which controls 31,680 kilometres out of 33,768 kilometres of the grid, followed by the Edison group, which controls 1,414 kilometres of the grid.⁴

There are 10 national gas storage sites of which eight are managed by Stogit SpA (part of the ENI group) and two are managed by Edison Stoccaggio.⁵

At the end of 2010 there were about 250 gas DSOs. The ENI group was the market leader with a 22.9 per cent market share in terms of volume.

Both the electricity and (downstream) gas markets are fully liberalised.

Retail customers and small business may opt between free market contracts and 'protected categories service'. Both electricity and gas are traded on exchanges organised and managed by Gestore dei Mercati Energetici SpA ('GME'). Trading on exchanges is carried out by generators, producers or importers, Acquirente Unico SpA (a single buyer, procuring energy for resale through the distributors to protected categories), energy and gas wholesalers, and gas shippers. Bilateral contracts may be entered into by all market participants.

3 Autorità per l'energia elettrica e il gas ('the AEEG') '*Relazione annuale alla commissione europea sullo stato dei servizi e sulla regolazione dei settori dell'energia elettrica e del gas*', 31 July 2011; available at www.autorita.energia.it/allegati/relaz_ann/11/Annual%20Report%202011%20IT.pdf.

4 Id.

5 Id.

II REGULATION

i The regulators

The energy market is regulated by the Energy and Gas Regulatory Authority, the AEEG, an independent authority led by five commissioners appointed by the government with the approval of a two-thirds majority of the competent parliamentary commissions. The AEEG is responsible for, *inter alia*, overseeing access of market operators to the gas and electricity grids and storage facilities, setting tariffs for access to the gas and electricity grids, promotion of fair competitive practices, protecting consumers' interest, promoting market transparency and energy efficiency. The AEEG may issue regulations that apply to market operators, and orders and decisions affect single operators. The main sources of regulation in the energy market are state laws, regional laws and administrative regulations issued by the AEEG.

ii Regulated activities

The electricity and gas markets have both been liberalised in furtherance of the objectives set by the EU liberalisation directives enacted at the end of the 1990s.

In the electricity market, no licence is generally required to carry out generation, import, export, purchase, supply and metering businesses. The operation of the distribution grid is carried out by DSOs under a state concession regime. The transmission grid is a natural monopoly mostly owned and operated under a concession regime by Terna SpA, a publicly listed company

In the gas market, no licence is generally required for production, import, and sales of natural gas. Storage, transport and distribution activities are operated under a concession regime.

The development and construction of new facilities (e.g., transmission lines, power plants and gas storage facilities) require permits mandated by state and regional legislation to ensure compliance with, *inter alia*, health and safety standards, environment protection and compatibility with existing infrastructure.

The process for obtaining such approvals is regulated by a combination of state and regional legislation and depends on the nature and location of the facility to be realised and of the permits required. The process is most often led by the regions (or, depending on regional legislation, further subdivisions delegated by the regions, for example, provinces), which coordinate the process involving all the agencies and authorities whose consent or opinion is required to finalise the permission process.

iii Ownership and market access restrictions

There are no restrictions on ownership of new and existing assets or service providers, other than – in relation to mergers and acquisitions – the instructions that the antitrust authorities may require the parties to comply with for antitrust clearance.

iv Transfers of control and assignments

A law decree enacted in March 2012⁶ requires the government to identify assets that are strategic to the national interest in the transportation, telecommunication and energy industries. The decree provides for a duty of prior notification to the government of any corporate resolution or proposed act or transaction, which may result in a transfer of ownership or control over such strategic assets, and for the government to be able to veto such transfer insofar as it would represent an actual threat to national security interests. The decree also provides that the government may oppose, or issue instructions in connection with, any transfer to non-EU persons of controlling interests in such strategic assets.

In addition, local rules or the terms of a concession may sometimes make the change in control of the entity owning or operating certain assets or holding the concession subject to prior notice, or a prior clearance of, the local issuing authority.

III TRANSMISSION/TRANSPORTATION AND DISTRIBUTION SERVICES

i Vertical integration and unbundling

The proprietary unbundling of the electricity industry has been substantially achieved during the decade from 1998 to 2007, with the breakup of the infrastructure of the state-controlled incumbent monopolist (ENEL) into different companies.

This process resulted in the separation of the business functions of the previous incumbent into (1) generation (ENEL SpA, EDISON SpA and a variety of other generation companies); (2) ownership and operation of the HV and UHV transmission grid (mostly Terna SpA, now publicly listed); and (3) ownership and operation of the MV and LV local distribution grid and sale (ENEL Distribuzione and a variety of local utilities).

As to the gas industry, the chain of production upstream of the local distribution pipelines is still largely dominated by the state-owned former monopolist (ENI), which has also been broken down into separate companies.

Most of such upstream infrastructure is directly or indirectly owned by SNAM, a listed holding company, which controls through separate companies the primary transportation pipeline (Snam Rete Gas), the main regasifier operator (GNL Italia), the main storage operator (Stogit) and one of the leading gas DSOs (Italgas).

SNAM is majority controlled by ENI, although separation is expected to take place. A prime ministerial decree is expected by May 2012 on the transfer to Cassa Depositi e Prestiti SpA of most of ENI's stake in Snam Rete Gas.

ii Transmission/transportation and distribution access

Electricity transmission and gas transportation as well as electricity and gas distribution infrastructures are operated on the basis of state concession having a duration of up to 12 years. The infrastructure operators are required to grant access to producers/generators and sellers.

6 Law Decree No. 21 of 12 March 2012.

iii Rates

Generally applicable tariffs for interconnection (dispatch, transportation, distribution and metering services) are set by the AEEG on the basis of formulae that aim at a fair remuneration of invested capital. The tariffs also include components to cover system costs (e.g., the cost of decommissioning of nuclear plants, feed-in tariffs and other forms of incentives for renewable sources).

iv Security and technology restrictions

The matter is regulated by EU Directive a 2008/114/CE issued within the framework of the European Programme for the Protection of Critical Infrastructure, launched in 2006. The Directive provides a framework for the identification and determination of security measures and procedures for the protection of critical European infrastructure. The Directive was locally implemented in 2011⁷ and sets out procedures and responsibilities for the protection of critical infrastructures and for the preparation and validation of emergency plans. Operators must appoint a safety and security representative, prepare an operator security plan, identify the critical assets of European critical infrastructures and the relevant means of protection, identify all potential threats, vulnerabilities and risks and outline the appropriate response plans. These plans must also address, among others, IT threats and vulnerabilities.

IV ENERGY MARKETS

i Development of energy markets

The market is operated by GME, a state-owned private company. An electricity market has been in operation since 2004, and it consists of the following:

- a* a spot electricity market, where energy blocks are traded over a period of nine days prior to the date of delivery; the market operates on an auction basis as bids/offers are accepted under the economic merit-order criterion and taking into account transmission capacity limits between zones;
- b* a forward electricity market, where trading of base-load and peak-load contracts with monthly, quarterly and yearly delivery periods are carried out on a continuous basis, with GME acting as central counterparty; and
- c* a platform for physical delivery of derivative contracts concluded on the IDEX segment of the Italian stock exchange.

GME also operates the natural gas market ('the M-Gas') where parties admitted to the '*punto virtuale di scambio*' (PSV, or virtual trading point) may make spot purchases and sales of natural gas quantities where GME plays the role of central counterparty.

The M-Gas consists of the day-ahead gas market (the MGP-Gas) operating on a combined continuous trading and a closing auction basis and intraday gas market (MI-Gas) operating on a continuous trading basis.

7 Legislative Decree No. 61 of 11 April 2012.

The GME also operates P-Gas, the platform for trading of imported natural gas and royalties on natural gas extracted under domestic concessions, and PB-Gas, the platform for trading of balancing gas.

ii Energy market rules and regulation

The energy and gas markets operate under market rules approved by the Ministry of Economic Development in consultation with the AEEG and as well as a number of technical rules issued by the GME.

The electricity markets and each of M-Gas, P-Gas and PB-Gas have their own set of market and technical rules. Market rules include criteria and procedures for admission of market participants, trading and settlement rules, as well as sanctions and sanctioning procedures in the event of a breach of market rules by or default by the market participants. GME is generally responsible for market operations and oversight as well as for the enforcement of market rules.

iii Contracts for sale of energy

Market participants are generally allowed to enter into individual contracts for the sale of power and natural gas. Since 2003 (for gas) and 2007 (for electricity) all customers are eligible to freely enter into contracts for the purchase of gas or power from sellers that meet certain minimum requirements. Power and gas sellers must comply with certain rules on transparency and fairness of information to customers under the supervision of the AEEG, but the rates and contractual terms may be freely determined subject to the aforementioned AEEG rules. Predetermined terms and conditions and rates are set out by the AEEG for the 'protected categories service' (i.e., those retail clients and small businesses that have not opted to join the liberalised market).

iv Market developments

Both the electricity and gas market have achieved a considerable level of liberalisation and the country has implemented efficient exchanges for trading of electricity and gas contracts, and radical developments in the way regulated exchanges for trading of gas and electricity operate are not expected at this stage.

However, certain amendments to pricing mechanisms could be introduced to address certain unintended consequences of the recent installation of a massive amount of PV power generation plants with a view to reducing the impact on operators of conventional plants and certain intraday pricing distortions. Input from photovoltaic plants has driven up the cost of energy in the evening hours due to the need for operators of conventional plants to concentrate the recovery of investment and inactivity costs in a more limited time span, when generation by PV plants is not available.⁸

The Ministry of Economic Development has been recently called to issue new guidelines on price formation on the electricity markets within 120 days 'in order to control costs and guarantee the security and quality of the power supply also through the enhancement of flexibility' by way of the so-called liberalisation decree enacted on 24

8 AEEG report to the Senate Industry Commission on 18 April 2012.

January 2012 and converted into law on 22 March 2012, 'taking into due account the increased production from renewable sources'.

On the gas markets there have been recent talks of allocating an increased component of the cost of investment for infrastructure (namely, regasifiers and import pipelines) to the retail tariff.

Pursuant to the liberalisation decree, customers falling in the 'protected category service' will be charged a tariff more closely tied to market dynamics.

V RENEWABLE ENERGY AND CONSERVATION

i Development of renewable energy

The share of production from renewable sources has dramatically increased over the past four years. This is due to public policy fostering the achievement of the 20/20/20⁹ objectives under the EU climate and energy package through incentives in the form of a feed-in premium for solar plants and green certificates for all other renewable sources.

The estimated aggregate installed capacity from renewable sources as at December 2011 was 41.532GW at the end of 2011, compared with 23.859GW at the end of 2008.¹⁰

The burden allocated to Italy under the EU climate and energy package called for 17 per cent of primary energy consumption (subdivided into electrical, heat and transport) to be generated from renewable sources with 26 per cent of electricity generation to come from renewables (projected to be equal to 100TWh per annum in 2020). Energy generated from renewables in 2011 has already reached 94TWh per annum.¹¹

Solar

The growth in energy from renewable sources is mostly attributable to PV installations, which rose dramatically from 0.432GW in 2008 to 3.470GW in 2010, and then to 12.750GW in 2011.

A large share of the installed capacity benefits from the 20-year feed-in premium that was granted under the second Conto Energia¹² to photovoltaic plants commissioned between 2007 and the second quarter of 2011. The incentives, whose cost is charged to consumers as a component of the electricity bill, were among the highest available in the world between 2009 and 2011 and prompted a staggering acceleration of new installations during those years.

Installations peaked between the third quarter of 2010 and the second quarter of 2011 due to the combined effect of the enactment of the third Conto Energia¹³ providing for generally lower and then steeply declining (depending on the month of

9 20 per cent reduction in emissions, 20 per cent renewable energies and 20 per cent improvement in energy efficiency by 2020.

10 GSE, '*Impianti a fonti rinnovabili in Italia*', 6 March 2012.

11 Recitals to the draft fifth Conto Energia and slides used by the Italian government to present its contents to the press.

12 Ministerial Decree 19 February 2007.

13 Ministerial Decree 6 August 2010.

commissioning) tariffs for plants commissioned from 2011 onwards and the so-called *Salva Alcoa Law*,¹⁴ which allowed plants that had reached mechanical completion in 2010 to continue to benefit from the feed-in tariff under the second *Conto Energia*, provided they achieved full commissioning by 30 June 2011.

On 3 March 2011 the government approved Legislative Decree No. 28/2011, which provided a comprehensive framework for incentives for renewable energy going forward ('the Renewables Decree'). One of its effects was the reduction of the availability of the third *Conto Energia* to plants commissioned on or before 31 May 2011, which then led to the approval of the fourth *Conto Energia*,¹⁵ which provided for further cuts and introduced annual and cumulative caps in terms of additional installed capacity for larger plants commissioned after August 2011. Access to the feed-in premium by larger plants (ground installations in excess of 200kW and rooftop installations in excess of 1MW) was granted or denied according to a ranking system based on several different criteria including the enrolment with a registry kept by GSE. This led to a further rush to complete ongoing projects before the registration regime kicked in. The fourth *Conto Energia* called for a review of the incentive scheme once the aggregate annual expenditures for feed-in premiums approached €6 billion. This amount is now being approached and on 12 April 2012 the government disclosed the terms of the draft fifth *Conto Energia*, which provides the incentives, now in the form of a feed-in tariff, from the earlier of 1 July 2012 until 2016, or the reaching of an aggregate cap in additional expenditure equal to €500 million. Qualifications based on a ranking system for sub-caps for each six-month period is extended from only large to virtually all plants (currently the only exception being those having an installed capacity of less than 12kW). The fifth *Conto Energia* has been submitted to the State–Regions Steering Conference and is expected to be approved by the end of May.

Consistent with the increasingly restrictive policy trends on further PV capacity development, the aforementioned Decree (No. 1/2012) inhibited access to the incentives to ground PV installations on farm land (other than those already approved for construction at the time of its coming into force), adding to the limitations in power and density of ground installations on farm land that had already been introduced by the fourth *Conto Energia*.

Policymakers expect new solar installations to stabilise at 2.5 to 3GW per annum.

PV technology is expected to reach grid parity no later than 2016 and, according to some operators, as early as 2013 or 2014.

Other renewable sources

Plants generating electricity from renewable sources other than PV are currently incentivised through the awarding of 'green certificates' in proportion with electricity generated multiplied by coefficients that are different for each technology. This form of incentive dates back to Legislative Decree No. 79/1999 (the so-called *Bersani Decree*).

14 Law No. 129/2010.

15 Ministerial Decree 5 May 2011.

Energy producers or importers accounting for more than 100 GWh of production/import per year are required to contribute to the grid a minimum quota (originally 2 per cent, which gradually increased to 6.8 per cent in 2011) of their production into the grid. This minimum quota can be complied with by buying a corresponding amount of green certificates.

Green certificates are issued by GSE and can be sold over the counter or through a trading platform operated by the GME.

The market for green certificates has been characterised by a structural bid-offer imbalance that would have resulted in prices too low for investment in renewable sources to be viable; however, GSE acts every year as a buyer of last resort of unsold green certificates from the previous year at the annual average price of electricity defined in such year by the AEEG. The duration of the green certificate regime is currently set at 15 years as of commissioning of the plant.

The Renewables Decree provides for the guidelines for a phase-out of the green certificate system and its replacement with an all inclusive feed in tariff mechanism applicable to plants commissioned after 31 December 2012. Plants commissioned before that date will continue to benefit from the green certificates until the end of 2015 when they will converge towards a feed-in tariff system and the GSE will continue to purchase the unsold certificates relating to the electricity produced during the period 2011–2015 at a price equal to 78 per cent of the reference price for the certificates for the previous year.

The new feed-in tariff regime must be designed to take into account the following main principles:

- a* a fair compensation for investment and operating expenses;
- b* a duration equal to the average lifetime of the plants; and
- c* stability for the whole period the plant benefits from incentives.

Larger plants having an installed capacity in excess of 5MW commissioned after 1 January 2013 will compete to obtain a feed-in tariff through descending-price auctions, whereas smaller plants (i.e., those that are smaller than 5MW but greater than 50kW) commissioned after such date will compete for the allocation of feed-in tariffs within sub-caps for six-month periods based on a registry enrolment and ranking system (similar to that provided for by the fifth Conto Energia for PV plants). The amount of the feed-in tariff will also be a function of the renewable technology deployed.

The draft of the ministerial decree providing detailed rules for the implementation of the above has been presented to the public at the same time as the fifth Conto Energia. It has been similarly submitted to the State–Regions Steering Conference and is expected to be approved by the end of May.

The objective is to increase annual expenditure for incentive to non-PV renewable from current amount of €3.5 billion to €5.5 billion. The target is an average additional 1.2GW per annum installed capacity. Incentives are expected to be phased out by 2020.

ii Energy efficiency and conservation

Public support to the achievement of energy goals in furtherance of the EU climate and energy package objectives is two pronged: a ‘white certificate’ scheme, and a programme of tax deductions on energy efficiency and conservation investment on buildings.

White certificates

White certificates (energy efficiency certificates, locally known as TEE) were first introduced by the Ministerial Decree of 20 July 2004, and then the programme was overhauled by the Ministerial Decree of 21 December 2007 and the Legislative Decree No. 11/2008. Similar to green certificates, the incentives revolve around the obligation imposed on gas and electricity DSOs with more than 50,000 customers to achieve certain minimum primary energy savings targets that are expressed in tons of oil equivalent ('toe') and increased on a yearly basis. The cumulative target for 2012 stands at 6 million toe. A DSO or a voluntary participant in the scheme (DSOs with less than 50,000 customers, energy service companies, DSO parents or affiliates or companies that have appointed energy managers pursuant to Section 19 of Law No. 10/91) may prepare and submit energy-efficiency projects with a view to obtaining white certificates. The project must comply with the criteria set out by the AEEG and be validated from a technical and administrative standpoint by ENEA.¹⁶ The project, once validated, entitles the applicant to be issued by GME one white certificate for each toe saving achieved. The certificates may be traded on the platform operated by GME or sold to DSOs over the counter.

Tax deductions

The tax-deduction programme provided for a tax credit equal to 55 per cent of investment made in increased energy efficiency and conservation of buildings, to be broken down into equal instalments over a period of 10 years and subject to a cap of €60,000 (55 per cent of €109,091). The works must fall into identified categories of energy conservation and optimisation works and be performed as part of renovations of existing residential heated buildings. The programme has been extended to the 2012 fiscal year and from 2013 will merge with the more general 36 per cent tax credit on investments for building renovations.

iii Technological developments

Italy is at the forefront of European research on smart grids. In 2011 Italy was the European leader in terms of financial resources committed to research projects on smart grids (accounting for 55 per cent of the aggregate) and was third in terms of number of research projects it leads and or coordinates (5.5 per cent of an aggregate of 219 projects).¹⁷

Since 2001, ENEL has been deploying a smart electronic metering system to its customer base, as well as providing other utilities capable of two-way real-time monitoring of input and consumption, which is now in operation with its 34 million customers (equal to 99 per cent of ENEL's customer base) and 4 million other utilities customers.¹⁸ Italy arguably has the largest operating smart grid in the world.

Some research has been undertaken into enhanced smart grids, including an EU-financed 'MV smartgrid' project in four southern Italian regions, a pilot project

16 The Italian National agency for new technologies, energy and sustainable economic development.

17 'Smart Grid projects in Europe – lessons learned and current developments', JRC Reference Reports, Luxembourg: Publications Office of the European Union, 2011.

18 Source: ENEL.

started in 2012 in Isernia for an advanced smart grid including smart programmable and metering-capable household appliances, non-programmable renewable input prediction systems and electric car charging systems.

Renewable energy incentives have been structured over time to allow higher remuneration of and access to separate sub-caps to certain advanced high-efficiency technologies (e.g., solar concentration plants and innovative integrated PV plants).

ENEA and ENEL have jointly developed – and commissioned in 2010 – Archimede, in Sicily: a pilot project for the realisation of a 5MW solar concentration plant combined with a conventional CCGT plant that uses molten salts as heat accumulators and vectors.

Several Italian companies, including Enel and Terna, are partners in the Desertec initiative aimed at realising a joint African–European initiative for the realisation of solar concentration and large-scale wind-generation plants in northern Africa and the HV DC lines for long-range transportation of electricity to the European grid.

VI THE YEAR IN REVIEW

i Key decisions, legislation, cases or policy changes

Some of the key developments in energy legislation 2011 and 2012 include the following:

- a* Approval of the Renewable Energy Decree (Legislative Decree No. 28 of 3 March 2011), which provides a comprehensive legislative framework for the development of generation from renewable sources in Italy consistent with the National Action Plan that was approved in 2012 and the consequent approval of the fourth Conto Energia.
- b* The popular vote on 12 and 13 June 2011, which, in the aftermath of Fukushima, scuttled the plans for revamping the Italian nuclear-generation project that had been fostered by the Berlusconi government.
- c* The extension (by virtue of Law Decree No. 138 of 13 August 2011, No. 138) of the Robin Hood Tax for fiscal years 2011 to 2013 to companies operating in the energy-regulated sectors (despatch, transmission and distribution) and to renewables operators (biomass, wind and PV solar), coupled with a reduction of the revenue threshold that triggers the application of the tax to €10 million and the increase of the relevant additional tax rate from 6.5 per cent to 10.5 per cent.
- d* The ‘Liberalisation Decree’ (Law Decree of 24 January 2012, No. 1, converted into law by Law 24 March 2012, No. 27), which provided for:
 - some key steps and the timeline for the unbundling of SNAM Rete Gas from ENI;
 - the criteria for the determination by the AEEG of remuneration on a single-asset basis of investment by Terna in the grid;
 - a ban on further development of PV plants on farm land; and
 - the issuance by the Ministry of Economic Development of the guidelines for a reform of the electrical market.
- e* The approval on 13 April 2012 of the drafts of the fifth Conto Energia and the decree on incentives to non-PV renewables.

f The draft law for the parliamentary delegation to the government to reform the tax system approved on 16 April 2012, which includes a delegation to introduce a carbon tax aimed at generating revenue to finance incentives for the development of generation from renewable sources in coordination with similar action plans at EU level.

ii Key mergers and acquisitions

Key M&A transactions in 2011 and up to 15 April 2012 include the following:¹⁹

- a* 22 December 2010: AXA Private Equity, the France-based private equity firm, and Fondi Italiani per le Infrastrutture SGR SpA, the Italy-based private equity firm, acquired E.ON Rete Srl, the Italy-based gas distribution business, from E.ON AG, the listed Germany-based power and gas company, for €290 million.
- b* 31 March 2011: GDF Suez SA, the listed France-based natural gas and electricity supplier, has acquired a 30 per cent stake in Tirreno Power SpA, the Italy-based company that generates thermoelectric and hydroelectric power, from Acea SpA, the listed Italy-based water and electricity utility group, for \$285 million.
- c* 18 May 2011: Antin Infrastructure Partners SAS, the France-based private equity firm specialising in the infrastructure sector has acquired Aprilia Solar (the Italy-based operator of photovoltaic plants and distribution of electricity), BS Solar Srl (the Italy-based company engaged in the production of electricity) and PN Solar Srl (the Italy-based company engaged in the production of electricity) from Volteo Energie Srl, the Italy-based holding company of Kinexia SpA engaged in the renewable energy sector and ER Energia Rinnovabile Srl, the Italy-based subsidiary of Volteo Energie Srl for €105 million.
- d* 6 June 2011: AXA Private Equity, the France-based private equity firm, and Fondi Italiani per le infrastrutture SGR SpA, the Italy-based private equity firm acquired 100 per cent of G6 Rete Gas (GDF Suez), a gas distributor with 990,000 customers, for €772 million.
- e* 23 June 2011: ILVA SpA, the Italy-based iron and steel producer and a subsidiary of Riva Group, the Italy-based iron and steel producer has agreed to acquire CET 2 and CET 3, the Italy-based electricity power plants located at Taranto, from Edison International SpA, the listed Italy-based energy company, for €160 million.
- f* 23 June 2011: ERG SpA, the listed Italy-based oil company that refines, distributes and markets crude oil and refined petroleum products, has agreed to acquire IVPC Power 3 Srl, the Italy-based operator of wind farms, from Italian Vento Power Corporation, the Italy-based company engaged in the production, construction, and operation of wind farms, for €100 million.
- g* 29 July 2011: Rete Rinnovabile Srl (RTR Group), the Italy-based solar energy company and subsidiary of Terra Firma Capital Partners III, LP, a UK-based private equity fund of Terra Firma Capital Partners Limited, the UK-based private equity firm, has agreed to acquire Nuova Rete Solare Srl (NRTS), the Italy-based company that owns, operates, and manages three photovoltaic plants,

19 Source: Mergermarket.

from Suntergrid SpA, the Italy-based company engaged in construction and maintenance of electricity transmission grids and plants for the generation of electricity and a subsidiary of Terna – Rete Elettrica.

- b* 29 July 2011: Rete Rinnovabile Srl, the Italy-based solar energy company and a portfolio company of Terra Firma Capital Partners Limited, has agreed to acquire 10 photovoltaic plants with a combined installed capacity of 78MW from HV grids, for an estimated €250 million.
- i* 16 February 2012: Electricité de France SA (EDF), the France-based generator, provider and distributor of energy, has agreed to acquire a 50 per cent stake in Transalpina di Energia Srl, the Italy-based energy joint venture between Delmi SpA and EDF, from Delmi SpA, the Italy-based holding company and subsidiary of A2A SpA, for €704 million. Transalpina di Energia already owns 61.3 per cent in Edison SpA's voting share capital.
- j* 16 February 2012: Delmi SpA, the Italy based holding company and subsidiary of A2A, has agreed to acquire a stake in Edipower, the Italy based energy provider, from Edison International SpA, the Italy based provider and distributor of electricity, and Alpiq, the Switzerland based distributor and provider of electric power, for a consideration of approximately €804 million. Edison and Alpiq will sell their 50 per cent and 20 per cent stakes in Edipower respectively.

iii Market developments and trends in 2012

Some of the developments that could currently be expected in 2012 are as follows:

- a* A significant contraction of development of new PV installations due to the combined effect of the credit crunch, of the uncertainties as to access to tariffs created by the fifth Conto Energia and the decree on incentives to non-PV renewable plants; new developments will have to be conceived with a view to achieving grid parity.
- b* The acquisition on the secondary market of the best and largest existing PV installations by both industrial (e.g., multi-utility companies) and financial (e.g., private equity, infrastructure and pension funds) players.
- c* The launch of the process of separation of SNAM from ENI.
- d* Increased public focus on energy efficiency.
- e* The possible increase or application of charges for the use of infrastructure and grid stabilisation for renewable plant operators.
- f* The introduction of a carbon tax and switching of the burden of incentives to renewables from the electricity bill to revenues generated by the carbon tax.
- g* Possible mergers and consolidation of municipal multi-utilities to achieve critical mass to invest effectively in R&D and infrastructure development and possibly operate internationally.
- h* A focus on the development of strategic infrastructure to secure supply and stock of natural gas (import pipelines, regasifiers and storage facilities), and simplification of the relevant permit process.

Appendix 1

ABOUT THE AUTHORS

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Simone Monesi is a partner in the Milan office. His practice focuses primarily on mergers and acquisitions (particularly in the real estate and energy sectors) and fund formation.

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